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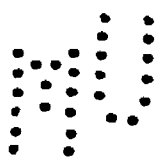
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INTERSTATE COMMERCE COMMISSION REPORTS.

INVESTIGATION AND SUSPENSION DOCKET No. 1446.

COAL FROM ILLINOIS MINES TO DESTINATIONS IN ARKANSAS, LOUISIANA, AND TEXAS.

Submitted February 9, 1922. Decided March 18, 1922.

Reduced rates on bituminous coal from mines on the Missouri Pacific Railroad in southern Illinois to destinations in Arkansas, Louisiana, and Texas, found not unjustly discriminatory, or unduly preferential or prejudicial. Orders of suspension canceled, and proceeding discontinued.

Henry G. Herbel and James M. Chaney for respondents.

Charles J. Rixey and W. N. McGehee for Southern Railway Company; *B. J. Rowe* for Illinois Central Railroad Company; *H. E. Morris* for St. Louis-San Francisco Railway Company; *S. L. Yerkes* and *A. J. Ribe* for Alabama Mining Institute; *G. F. Graham* for West Kentucky Coal Bureau; *H. J. Trossen* for Old Ben Coal Corporation; *C. E. Warner* for Southwestern Interstate Coal Operators Association; and *F. H. Harwood* and *R. W. Ropiequet* for Illinois Coal Traffic Bureau.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

AITCHISON, Commissioner:

By schedules filed to become effective December 5 and 24, 1921, respondents proposed to reduce their carload rates on bituminous coal from mines on the Missouri Pacific Railroad in southern Illinois to destinations in Arkansas, Louisiana, and Texas, as published in supplements Nos. 11 and 13 to Missouri Pacific tariff I. C. C., No. A-4891. Upon protest of the Alabama Mining Institute and the West Kentucky Coal Bureau, on behalf of competing Alabama and western Kentucky coal districts, the schedules were suspended until April 23 and May 4, 1922.

The purpose of the reduction to Arkansas and Louisiana is to increase the volume of movement from mines in southern Illinois on the Missouri Pacific by the establishment of rates which, generally speaking, are no higher than those now in effect from competing

mines. Except to points south of Glenmora, La., a point on the Missouri Pacific 27 miles south of Alexandria, La., the rates carried in the suspended schedules are the same as the lowest now applicable from Alabama or western Kentucky to competitive points. To the excepted points the proposed rates are 25 cents over rates from Alabama mines.

Monroe, Rayville, and Tallulah, La., are points on lines of the Missouri Pacific, and are served also by the Vicksburg, Shreveport & Pacific Railroad. Alexandria and Lake Charles, La., are on the Missouri Pacific 97 and 196 miles, respectively, south of Monroe, La. All five points are reached by a one-line haul over the Missouri Pacific from its southern Illinois mines. From western Kentucky the haul is over two or more lines; from Alabama mines there is at least a four-line haul, and from Southern Railway group-4 mines to Alexandria a five-line haul. The proposed revision in Louisiana centers very largely on these competitive points.

The following table, taken from exhibits of record, shows the present rates from the various coal fields to the points named and those proposed by the Missouri Pacific, also the distances. The distances shown from western Kentucky and Alabama, of course, are via routes of which the Missouri Pacific forms no part. All rates stated herein are in amounts per net ton.

To—	Southern Illinois: Missouri Pacific mines.			Alabama: Southern group 5.		Alabama: St. L.-S. F. group 2.		Western Kentucky mines.	
	Dis- tance.	Present rate.	Pro- posed rate.	Dis- tance.	Rate.	Dis- tance.	Rate.	Dis- tance.	Rate.
	<i>Miles.</i>			<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>	
Monroe.....	464	\$3.645	\$3.54	395	\$3.535	419	\$3.87	561	\$3.54
Rayville.....	462	4.32	3.54	374	3.535	395	4.17	508	4.27
Tallulah.....	462	3.645	3.54	341	3.335	362	3.97	505	3.54
Alexandria.....	562	4.455	4.20	517	4.20	517	4.20	608	4.47
Lake Charles.....	659	5.13	4.79	600	4.665	546	4.54	762	4.87

There has been substantially no movement from Missouri Pacific southern Illinois mines to the five points named. In fact, there appears to be a negligible use of coal at Monroe, Rayville, and Tallulah, due to the use of oil and natural gas. There is some consumption at the other points, and the movement has been from western Kentucky and Alabama.

The proposed rates will yield ton-mile earnings of approximately 7.63 mills to Monroe, 8 mills to Rayville, 7.66 mills to Tallulah, 7.49 mills to Alexandria, and 7.26 mills to Lake Charles. The \$3.54 rate is carried back to Lexa, a station just west of Helena, Ark., and the Alexandria and Lake Charles rates are held as maxima at intermediate points.

Respondents propose reduced rates to Arkansas and Louisiana points on a number of connections of the Missouri Pacific, mostly short lines, with a view to establishing or maintaining proper relationships to Missouri Pacific points in the same territory. Reductions are proposed to Texas & Pacific and St. Louis Southwestern points intermediate to Dallas, Fort Worth, and Sherman, Tex., in order to eliminate existing deviations from the requirements of the long-and-short-haul clause of section 4 of the interstate commerce act. No changes are proposed to the three points named.

Heretofore there have been no joint rates from Missouri Pacific southern Illinois mines to points on the International & Great Northern Railroad, and respondents propose to publish via that line the rates now in effect via the Texas & Pacific and St. Louis Southwestern to junction points, and to make rates to International & Great Northern points south thereof the same differentials over the rates to the junction points as exist in connection with rates on coal from the Mississippi River. The proposed rate to Houston, for example, is \$5.94, and the present rates from other mines are: Illinois Central mines in southern Illinois, \$5.13; western Kentucky, \$6.05 via the Illinois Central and \$9.29 via the Louisville & Nashville or Southern; and Alabama mines, \$5.715.

A witness for the Alabama Mining Institute characterized the rate structure from Alabama to southern Arkansas, Louisiana, and northern Texas as a "calico quilt," some of the carriers having through rates to some points and combination rates to others, and testified that the Alabama coal operators have complained to the carriers over a period of about 15 years about the lack of fair and proper rates. It is the contention of this protestant that to southern Arkansas there should be a parity between Alabama, southern Illinois, and western Kentucky mines, and that to Louisiana there should be differentials in favor of Alabama mines of 15 cents to points north of the Vicksburg, Shreveport & Pacific and 25 cents to points on and south of that line. The other protestant, the Western Kentucky Coal Bureau, produced no evidence, but its counsel stated that its position with reference to the proposed rates is the same as that of the Alabama protestant.

The Southern Railway Company also contends that the advantage heretofore enjoyed by Alabama mines in rates to points on and south of the Vicksburg, Shreveport & Pacific should not be taken away. Like the Alabama Mining Institute it offered no testimony as to the reasonableness of the proposed rates from southern Illinois, but did offer to produce evidence to show that rates from its Alabama mines were reasonable and that it could not afford to make any reduction therein. The St. Louis-San Francisco Railway takes the

same position as the Southern with reference to the question of relationship. The Illinois Central states its intention of meeting the reduced rates, should they go into effect, from its southern Illinois mines and also from mines on its lines in western Kentucky.

Both the Alabama Mining Institute and the Southern Railway stated that the question is primarily one of relationship, rather than one of reasonableness of rates, and that the situation can be satisfactorily disposed of only in a proceeding sufficiently broad in its scope to cover the reasonableness, as well as the relationship, of rates from the several fields.

We are of opinion and find that the reduced rates carried in the suspended schedules will not result in unjust discrimination or undue preference or prejudice. An order will be entered vacating our order of suspension and discontinuing the investigation.

68 I. C. C.

EX PARTE No. 80.

IN THE MATTER OF AWARDING REPARATION ON A LOWER BASIS PRIOR TO JUNE 25, 1918, THAN ON AND AFTER THAT DATE.

Submitted October 6, 1921. Decided March 14, 1922.

Whether reparation should be awarded on the same basis in respect of transportation during Federal control before and after June 25, 1918, depends upon the facts of record in each case.

John F. Finerty for Director General of Railroads.

Luther M. Walter and *John S. Burchmore* for National Industrial Traffic League; *Richard Townsend* for N. Nagase & Company; *James Levy* for Mitsui & Company; *R. D. Rynder* for Swift & Company; *Paul E. Blanchard* for Armour & Company; *James H. Henderson* for State of Iowa; *Frank A. Gaynor* for General Motors Company; *F. W. Knocke* for self and others; *Francis B. James* for Charles Boldt & Company; *Fayette B. Dow* and *Willis Crane* for National Petroleum Association and the Western Petroleum Refiners' Association.

REPORT OF THE COMMISSION.

HALL, Commissioner:

This proceeding was instituted upon our own motion to afford interested parties an opportunity to argue orally the question whether, in finding unreasonable the rates charged by the Director General of Railroads on traffic which moved during Federal control, and in awarding reparation therefor, we should apply a lower basis to shipments made prior to June 25, 1918, when rates were increased approximately 25 per cent, than on shipments made on or after that date.

The position of the director general, as stated by counsel, is that, where the commission itself fixes a given rate as reasonable subsequent to June 25, 1918, there can be no justification for fixing a lower rate as reasonable prior to that date, because the increase in wages of railroad employees was made retroactive to the beginning of Federal control on January 1, 1918, and because railway materials and other expenses had substantially increased before the increase in rates was operative. In this respect he asks that consideration be given to the fact that although certain economies were instituted as

an incident of Federal control there was a deficit in operating results for the period from January 1 to June 24, 1918. He calls attention to decisions in which we appear to have recognized the point urged by him. *Lake Park Refining Co. v. Director General*, 60 I. C. C., 381; *Steel Cities Chemical Co. v. Director General*, 56 I. C. C., 723; and *Swift & Co. v. Director General*, 61 I. C. C., 567. But in *Nagase & Co. v. Director General*, 62 I. C. C., 422, the director general relied upon these cases in support of this proposition, and we said:

We do not understand the cases cited by the Director General are authority for the broad proposition for which he contends. It would be easy to cite many cases in which the Commission has found certain rates reasonable down to June 24, 1918, and the same rates plus the increases under general order No. 28 to be reasonable after that date. * * * This contention overlooks the fact that a shipper is entitled to a reasonable rate and that one of the tests of a reasonable rate is its relationship to other rates on the same or analogous commodities between points in the same general territory for similar distances.

The director general does not contend that the increase of June 25, 1918, should be applied retroactively. His position is that if, in awarding reparation against him, the same basis is not applied on shipments made prior to June 25 as on shipments thereafter, the effect is to penalize the Government for having failed to initiate at an earlier stage of Federal control the increased rates which, if then established, would doubtless have been found reasonable.

The chief argument made by shippers is that rates in this country are, generally speaking, adjusted with relation to other rates and that the question whether a particular rate is reasonable is determined largely by consideration of rates exacted on analogous commodities under comparable conditions. We have often recognized the principle that the words "just and reasonable" imply the application of good judgment and fairness, of common sense and a sense of justice, to the facts of record. The words "just and reasonable" are not fixed unalterable mathematical terms. *Advances in Rates on Coal by the C. & O. Ry. Co.*, 22 I. C. C., 604. Moreover, as has been recognized by the Supreme Court there must exist range for "the flexible limit of judgment which belongs to the power to fix rates." *Atlantic Coast Line v. N. Car. Corp. Com'n*, 206 U. S. 1, 26. There could be no flexible limit of judgment if all rates were to be measured by their relation to cost or by a predetermined rule.

Shippers urge that the rule suggested by the director general is unsound and if adopted would bring about anomalous situations. In *Sulzberger & Sons Co. v. C., R. I. & P. Ry. Co.*, 55 I. C. C., 691, the complaint was filed in 1916. The decision was in 1919. If the reasonable maximum rates there prescribed had been established prior to June 25, 1918, they would have been subject to the general increase of that date. Can it be said that because a case is decided after June

25 the fact that rates prior to that date were on a different level should be disregarded? The director general asks in effect that, where particular rates are found unreasonable after June 25 on shipments which moved during Federal control both before and after that date, we arbitrarily use January 1, 1918, as the dividing line because the retroactive application to January 1 of the wage award substantially increased the operating expenses during the ensuing period down to June 25, although operating revenues were not increased until the latter date. That is another way of saying that the increases effective on June 25 should be applied retroactively to January 1, 1918, in so far as affecting complaints. If that contention is sound as applied to the director general it is likewise sound as applied to the corporate carriers. Their rates were increased on August 26, 1920, following *Increased Rates, 1920*, 58 I. C. C., 220, and, as the wage award of the United States Labor Board of July, 1920, to railroad employees was applied retroactively to May 1, 1920, the question would arise in determining the reasonableness of rates on shipments made prior to August 26, 1920, whether any rate, found to have been unreasonable prior to that date may nevertheless properly include the percentage increase authorized in that case. Shippers might with equal propriety ask that general reductions apply retroactively.

The fact that in some of the decided cases we have awarded reparation to the same basis upon shipments made before and after June 25, 1918, does not necessarily reflect any variance in principle. The director general urged in many of these cases that conditions which led to the increases of June 25, 1918, existed prior to that date, and in certain instances our award of reparation to the same basis before and after June 25, 1918, showed that, in those instances, we considered the contention well founded and controlling. But in the preponderance of cases we have not found the same contention of equal merit. Operating conditions prior to June 25, 1918, including the retroactive application of the wage award, were important factors, but they were not necessarily controlling in determining the reasonableness of rates after January 1 of that year. Unconsciously, it may be, but none the less really, counsel for the director general asks us to decide cases in advance by laying down some principle of determination which will be controlling before we know anything about the state of facts to which it will be applied. We are convinced that we would not be warranted in announcing any rule of general application as a basis for determining the reasonableness of rates exacted on shipments moving before or after June 25, 1918, or any other date. We are equally convinced that in proceedings against the director general, as in all others, we must adhere to the sound and salutary principle that whether and to what

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extent a rate was or is unjust or unreasonable in a particular case is a question of fact, to be determined by the exercise of good judgment, informed by experience, in the light of all the pertinent facts of record in that case.

No occasion appears for reopening any of the cases which have been pressed upon our attention and this proceeding will be discontinued. No order is necessary.

68 I. C. C.

No. 12528.

STANDARD RAIL & STEEL COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS
NOS. 1606, 1952, AND 2060.

Submitted November 10, 1921. Decided March 7, 1922.

1. Rate charged on two carloads of old rails from LaFayette, Ind., to Mobile, Ala., found unreasonable. Reparation awarded.
2. Fourth section relief denied.

*W. C. Ropiequet and R. W. Ropiequet for complainant.**R. J. Eddelman for defendants.*

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation dealing in scrap iron at St. Louis, Mo., alleges that the rate of 45 cents per 100 pounds, equivalent to \$10.08 per long ton, charged on two carloads of old rails shipped July 1, 1919, from LaFayette, Ind., to Mobile, Ala., was unreasonable and in violation of section 4 of the interstate commerce act. We are asked to award reparation and to establish a reasonable rate for the future. Rates are stated in amounts per long ton unless otherwise noted.

LaFayette is on the main line of the Chicago, Indianapolis & Louisville, hereinafter called the Monon, 120 miles south of Chicago, Ill., and 204.2 miles north of Louisville, Ky. The shipments weighed 78,900 and 102,500 pounds, respectively, and moved over the Monon to Louisville, and the Louisville & Nashville beyond, 874.2 miles. Charges of \$816.30 were collected at a less-than-carload commodity rate of 45 cents per 100 pounds, applicable on these shipments, as there was no carload commodity rate and the charges thereunder were less than under the sixth-class carload rate of 51.5 cents.

When the shipments moved a joint commodity rate of \$5.30 applied on old rails from Chicago to Mobile via LaFayette. The rate assailed was also in excess of the following aggregates of intermediate

rates contemporaneously maintained: \$6.10, constructed by using components of \$2.50 from LaFayette to Louisville and \$3.60 from Louisville to Mobile; and \$5.80, with components of \$1.30 to Roachdale, Ind., intermediate between LaFayette and Louisville, and \$4.50 from Roachdale to Mobile.

Portions of fourth section applications Nos. 1952 and 2060, filed by the Louisville & Nashville and agent J. F. Tucker, respectively, by which the carriers concerned sought authority to continue to charge for the transportation of old rails from LaFayette to Mobile through rates which exceed the aggregate of the intermediate rates subject to the act, were previously heard in other proceedings. Portions of these applications and also No. 1606, filed by agent C. E. Fulton, by which the carriers seek authority to continue to charge for the transportation of old rails from Chicago to Mobile rates which are lower than the rates contemporaneously maintained on like traffic from LaFayette and other intermediate points, were heard with this case. No justification has been offered in support of these applications and they will be denied to the extent that they are here involved.

We find that the rate charged was unreasonable to the extent that it exceeded \$5.80 per gross ton; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$346.66, with interest.

Appropriate orders will be entered.

68 I. C. C.

No. 11265.
SUN COMPANY
v.
DIRECTOR GENERAL, AS AGENT, DELAWARE RIVER &
UNION RAILROAD COMPANY, ET AL.

Submitted December 21, 1920. Decided March 7, 1922.

1. The Delaware River & Union Railroad found not to be a common carrier subject to the interstate commerce act.
2. Defendants' failure to perform, or to make an allowance for the service of spotting cars at points of loading and of unloading within complainant's plant found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

William W. Collin, jr., Francis S. McIlhenny, and Clark L. Dickson for complainant.

Henry Wolf Biklé and William L. Kinter for defendants.

Alexander M. Bull for director general.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed to the report proposed by the examiner and oral argument has been had.

Complainant, a corporation, refines and ships petroleum and its products at its plant at Marcus Hook, Pa., about 17 miles south of Philadelphia, Pa., and within the so-called Philadelphia rate district. By complaint filed February 25, 1920, it alleges, in substance, that the failure and refusal of the trunk line defendants to pay or absorb the switching charges of defendant Delaware River & Union Railroad Company, hereinafter called the Union, on interstate shipments between points in complainant's plant and points of interchange with the trunk lines has resulted and will result in the payment by it of rates and charges which were and are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial, in comparison with the rates to and from the plants of its competitors in the same territory to and from which no charge in addition to the Philadelphia district rates is made. It asks adjudication of the status, rights, and obligations of complainant and the Union, respectively, in respect to the interchange service described in the complaint, and compensation for the performance of said services in the future as well as reparation in

the sum of \$65,000. At the hearing counsel agreed to postpone the reparation issue until a later date.

Complainant's plant is bounded on the south by the Delaware River, and on the east and west by city streets. Within the plant inclosure are several structures, including at the north those of the Hardwood Package Company, a subsidiary of complainant, hereinafter referred to as the hardwood company, and at the south a pier extending into the Delaware River, at which traffic is received from and delivered to vessels. South of its center the plant is crossed from east to west by the rails of the defendants Pennsylvania and Philadelphia & Reading, the latter hereinafter referred to as the Reading. The tracks of these trunk lines, laid on their own rights of way, parallel each other and the river, and are a few hundred feet apart. The trackage of the Union is entirely within the plant and consists of a single-track main line running from the pier above mentioned to the structures of the hardwood company, about 0.9 mile, and about 4.02 miles of sidings. Interchange of traffic with the Union is made by the Pennsylvania and Reading on second tracks or sidings of those trunk lines which, with what may be termed their first tracks, cross the main line of the Union within the plant inclosure. Inbound cars are placed on these interchange tracks without classification. If the Reading's interchange track is filled it places complainant's cars on adjacent tracks of the Union; but the Pennsylvania in like case holds cars short of its track. This is said to constitute constructive placement. Two, and sometimes three, shifts daily are made by each of the trunk lines. Their locomotives, except on rare occasions, perform no service for the Union and do not enter upon its tracks.

The inbound traffic of complainant and the hardwood company consists principally of coal, oil in tank cars, old oil and slack barrels, cooperage stock, and building materials, and amounts to about 22 cars per day. The outbound traffic, which averages about 45 cars per day, consists principally of fuel and lubricating oils, asphaltum, and new barrels and kegs.

The Union with its own locomotives takes inbound cars from the interchange tracks and, after classifying in its yard, spots them for unloading at various points within the plant. The average haul from the interchange tracks is between one-third and one-fourth of a mile. Outbound traffic is picked up by the Union at the various loading places throughout the plant, and, after being weighed by complainant on its scales, is placed by the Union on the interchange tracks without being classified. For this service complainant and the hardwood company pay the Union \$3 per car on both outbound and inbound traffic, and it is for this service that compensation is now being asked of defendants.

In addition to the interchange service the Union performs many intraplant services for complainant and the hardwood company. Both kinds of service are performed with the same locomotives and crews and frequently are combined in the same movement. For intraplant services, other than switching to the pier, the Union makes a flat charge to complainant of \$12,000 a year; what charge, if any, is made against the hardwood company does not appear.

The Union was incorporated in 1902 under the railroad laws of Pennsylvania with a capital stock of \$8,000. No bonds have been issued. Some years later the capital stock was increased to \$200,000, the details not clearly appearing of record. Since its incorporation the Union has apparently been operated at a loss, complainant advancing money, as needed, to pay its operating and other expenses. At the time of the hearing the Union's indebtedness to complainant was about \$50,000. Complainant owns 1,990 of the 2,000 shares of capital stock of the Union and some of the remaining 10 shares are owned or held by officials of complainant who are also officials of the Union. The president and secretary-treasurer of complainant hold the same positions with the Union; the vice president of the Union is the superintendent of complainant's plant. These officers all serve the Union without compensation from it. The accountant, who devotes his entire time to the Union, and complainant's traffic manager, who does considerable work for the Union, each receives his entire compensation from complainant. The Union's yardmaster reports to complainant. Repairs to the tracks and cars of the Union are made by employees of complainant. The mileage earned by complainant's tank cars, although collected by the Union for complainant's credit, is retained by the Union "to pay current expenses." The Union owns no land. It does, however, own the rails, ties, and ballast. The road uses the standard trunk line type of switches and frogs, is ballasted with cinders, laid with 85-pound rails, and is kept in good operating condition. The equipment of the Union consists of 2 locomotives of the saddle-tank type, 8 box cars, 22 flat cars, and 10 gondolas. These cars, which are not maintained according to the safety-appliance acts, never leave the Union's tracks and are used in intraplant service. The Union files with us its annual reports, monthly accident and hours-of-service reports, and one tariff. It handles no passenger, mail, or express business, issues no bills of lading, and does not pay per diem to the trunk lines. Demurrage is collected by the trunk lines, detention being computed from the time when the cars are placed on the interchange tracks.

Some coal for bunkering ships, chiefly those of complainant, moves over the Union from the interchange tracks to the pier. This traffic complainant regards as its own. Occasionally, when a vessel is not

to take on a full cargo from complainant, arrangements are made with complainant by foreign customers or brokers for delivery to the vessel of the balance of its cargo. The traffic is so routed as to be handled by the Union from the interchange tracks to the pier. A charge of \$3 is made by the Union for this service, which is not covered by tariff provision. This, it is said, is the only outside traffic handled by the Union. In 1918 it amounted to 3 cars and in 1919 to 15 cars. In prior years the volume was greater. This traffic is not received from or delivered to an independent shipper located on the Union, but develops only when some remaining cargo space is available in vessels which have come to the pier to load products of complainant usually to the extent of 50 per cent or more of their space. The pier is owned by complainant and may not be used for the purpose mentioned without its consent. The situation is similar at the so-called public team tracks. They are located on complainant's property within the plant inclosure, which is surrounded by a fence, and access to them can be had only with the permission of complainant. Apparently no use has been made of them by the public within the past three years, if ever.

The record shows that the control of the Union by complainant is direct and that its operation is practically in the exclusive interest of complainant and the hardwood company. It has not in the past held itself out to the public as a common carrier. It is the right of the public to use the road's facilities and to demand service of it rather than the extent of its business which is the real criterion determinative of its character. *Tap Line Cases*, 234 U. S., 1, 24. We find that under this test the Union is a plant facility of complainant and its subsidiary the hardwood company.

Complainant's allegation of unreasonableness, unjust discrimination, and undue prejudice rests on a showing that in the Philadelphia district the trunk line defendants perform the spotting service for complainant's competitors without charge in addition to the line-haul rate. For example, adjoining complainant's plant on the west is that of the Pure Oil Company, and in the immediate vicinity of its refinery is that of the Texas Company, both within the Philadelphia rate district. The spotting service is performed for them by the Reading without charge over and above the Philadelphia district rate. The Pure Oil Company receives about eight cars a day inbound. At Point Breeze station, also in the Philadelphia rate district, is located the plant of another competitor, the Atlantic Refining Company, with a capacity of about two and one-half times that of complainant. This plant is operated in two units which are separated by the property of the United Gas Improvement Company. One unit, referred to as the Atlantic plant, is served by the Penn-

sylvania, and the other, known as the Philadelphia refinery, by the Baltimore & Ohio, not a party defendant. The spotting at both units is done by the trunk lines, as is also the necessary intraplant switching. No charge in addition to the line-haul rate is made at either plant for the first spotting, but if the car be spotted a second time a charge of \$2 is made. For movements between points within either plant a charge of \$2.50 is made, and for movements between the two units the charge is \$6.50. There are about 5.5 miles of track in the Atlantic plant and about 8 miles in the Philadelphia plant, all maintained by the refinery. Apparently the trunk lines make no allowances to any of complainant's competitors.

During the construction and following the completion of complainant's plant traffic to and from it was handled by the Reading, which did the spotting at various places within the plant. About a year later the Reading was advised that because of the inability of the railroads to do the intraplant work as complainant "would like to have it done * * * they were going to get their own power." An engine was first leased from the Reading, but in 1902 the Union was incorporated and locomotives purchased. Since then the Union has performed the interchange and intraplant work for complainant and the hardwood company, as above set forth. Whether the trunk lines were in 1902 or at a later date definitely advised that they were no longer to spot the cars in complainant's plant does not clearly appear of record. It seems, however, to have been generally understood by them that they were no longer to enter upon the tracks of the Union and that the plant was to do its own spotting, receiving and placing the cars on the interchange tracks. The traffic manager of complainant testified:

the superintendent has asked on many occasions that various services be performed within our plant with trunk line power. The Pennsylvania has consistently refused on all occasions to leave their rails. The Reading has in some instances complied with the request.

The testimony of the carriers is directly to the contrary. It is fairly clear from this record that no request has ever been made by complainant upon the trunk line carriers to perform a general spotting service at its plant, and that occasional requests for spotting service have been complied with.

In August, 1917, complainant made application to the proper committee of the trunk line carriers for an industrial railroad allowance to cover the cost of the service performed by the Union. Investigation was made and the committee found that the Union "is strictly a plant facility operation" and recommended that "if an allowance is granted it should be on a plant facility basis." Subsequently complainant's traffic manager was advised that the appli-

cation had been approved by the "terminal allowance committee." Federal control of the carriers intervened, however, and after pursuing the matter with the railroad administration this complaint was filed.

It is clear from the language of the complaint and the record that the object sought by complainant is the payment to it of an allowance for the interchange service, and that it prefers to do this work itself. In its brief for the first time appears the suggestion that if the Union be found to be a plant facility, the discrimination may be removed by requiring the trunk lines to make a plant-facility allowance or perform the service themselves as "efficiently and fully in all other respects as they perform the service for complainant's competitors."

Whatever transportation service or facility the law requires carriers to supply they have the right to furnish. *Atchison Railway Co. v. United States*, 232 U. S., 199, 214. In *Whitaker-Glessner Co. v. B. & O. R. R. Co.*, 63 I. C. C., 47, we said, at page 56:

We can require the carriers to perform the interchange switching if we find it to be a reasonable transportation service incident to the line haul, but we can not compel them to act as a unit, or to do the work at the convenience and to the satisfaction of complainant. We can not order defendants to make an allowance. Whether a shipper shall receive an allowance in lieu of such switching service is optional with the carriers.

At the hearing the trunk lines offered to perform the interchange service provided this was done under their exclusive direction and control and without interference from complainant, the work to be regarded as completed when defendants encountered interference of any kind resulting from operations of complainant.

We find that the failure or refusal of defendant trunk lines in the past to perform the switching and spotting service in question, or to make an allowance to complainant for performing that service, was not unreasonable, unjustly discriminatory, or unduly prejudicial.

For the future we shall assume that upon request, and without an order, the defendant trunk lines will promptly make good their proffer to spot cars within complainant's plant, under the reasonable conditions attached thereto, such spotting to involve only one placement of a car and the movement to be made without interference. The complaint will be dismissed.

No. 11659.

MARION & EASTERN RAILROAD COMPANY

v.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY
ET AL.

Submitted October 1, 1921. Decided March 14, 1922.

Divisions accorded complainant out of joint rates on coal from mines on its line to points in Iowa, Wisconsin, and Nebraska, not found unjust, unreasonable, inequitable, or unjustly discriminatory. Complaint dismissed.

William H. Warder and *Francis B. James* for complainant.

A. P. Humburg, *K. L. Richmond*, and *H. G. Herbel* for defendants.

REPORT OF THE COMMISSION.

CAMPBELL, *Commissioner*:

Exceptions were filed by the complainant to the report proposed by the examiner and the case was orally argued.

The Marion & Eastern, hereinafter referred to as the Marion, a short line engaged chiefly in the transportation of coal in Illinois, alleges that the divisions it receives out of joint rates on coal to interstate destinations on and via the lines of defendants were and are unjust, unreasonable, inequitable, and unjustly discriminatory in violation of the interstate commerce act. We are asked to prescribe a division of 27 cents in lieu of the present divisions approximating 20 cents per ton. Reparation is sought. Divisions herein are stated in cents per ton of 2,000 pounds. Intervening petitions for the purpose of being heard on oral argument on the question of law involved were filed by certain New England lines.

The Marion extends from Marion, Ill., to Paulton, Ill., 11.5 miles. It has direct physical connections with the Chicago & Eastern Illinois, Missouri Pacific, and Illinois Central at or near Marion. Approximately 97 per cent of its freight traffic consists of coal supplied by five mines having an aggregate daily rating of from 99 to 107 cars. The actual output of the mines at the time of the hearing was estimated at between 50 and 60 per cent of the rating. It originates traffic and transports the cars, which are furnished by defendants, to the points of physical connection. The average haul is 8.1 miles. It transports some freight other than coal and also handles passenger and express traffic. Beginning sometime in 1918 it received on coal a division of 15 cents, which was increased on August 26, 1920, pursuant to our decision in *Increased Rates, 1920*, 58 I. C. C., 220, hereinafter referred to as *Ex Parte 74*, to 20 cents, and in some cases to 20.25 and 21

cents. As above stated, a division of 27 cents is asked which complainant considers necessary to enable it to pay operating expenses and fixed charges, and to yield a 6 per cent return on the value of the railway property held for and used in the service of transportation.

The road was constructed about 1908, has been in receiver's hands, and was purchased by its present owners in 1917 by the payment of \$60,000 for all shares of the capital stock and by the assumption of indebtedness amounting to about \$23,000. Several owners of shares of stock of one of the mines are stockholders of the Marion. In 1919 engineers of the Public Utilities Commission of the State of Illinois made an appraisal of the property and fixed its value at \$253,000. Bonds amounting to \$530,000 par value were authorized, of which \$175,000 par value are outstanding. They were sold for approximately 85 per cent of par value and all but \$23,000 of the proceeds has been expended in laying new rails, providing ballast, and generally improving the line. The value of the property, on which a fair return is asked, is alleged to be \$245,221.32, which represents what the present owners paid in 1917 plus the money expended on the property since that time for extensions, betterments, and purchase of equipment.

During 1919 the Marion originated 183,382 tons of coal from the five mines and 9,291 tons of miscellaneous freight, and for the first six months of 1920, 213,189 tons of coal and 6,780 tons of other freight. The operators of the mines served own a large acreage of coal lands which have not been fully developed.

Defendants, in comparing the divisions allowed the Marion with those received by other short lines, show that in most cases the divisions received by the Marion are equal to or greater than the divisions received by other short lines for similar or longer hauls. They urge that they are entitled to a percentage of the divisions relatively greater than accorded complainant because they not only furnish all of the coal cars but in many instances act as the delivering carriers. It appears, however, that per diem is being assessed. They also point out that the three lines connecting with the Marion are the only parties defendant and question our jurisdiction to award increased divisions in the absence as parties defendant of all carriers which perform part of the transportation service. They offered no evidence as to the cost of the service performed by them or as to the revenues which they receive from their share of the joint rates on coal maintained from points on the Marion. Nor was any evidence of their financial condition offered. They rest their case chiefly on comparisons of complainant's divisions with those received by other short lines performing substantially similar service.

The total operating revenues of the Marion for 1919 were \$47,631.95, and operating expenses \$41,202.79, showing a net income

from railway operations of \$6,429.16. Tax accruals of \$1,871.49, miscellaneous interest of \$924.69, and interest on bonds of \$10,500, aggregated \$13,296.18, making a deficit for 1919 of \$6,867.02. For the first six months of 1920 the operating revenues were \$48,161.17 and the operating expenses \$37,698.88, resulting in a net operating income for that period of \$10,462.29; tax accruals amounted to \$1,163.90, and miscellaneous interest and interest on bonded indebtedness \$5,950.04, a total of \$7,113.94. All revenues for both 1919 and the six months of 1920 are based on a division of 15 cents on coal. During the latter period the coal tonnage aggregated 213,189 tons. Applying to this tonnage the increase of approximately 5 cents under *Ex Parte 74* would augment the net income \$10,659.45. The revenue derived from passenger service during the same period, based on the prevailing fare of 2 cents per mile, amounted to \$6,919.74, or about one-seventh of the total revenue. Complainant admitted that the fare charged of 2 cents per mile was too low. Following our authority granted in *Ex Parte 74* passenger fares generally throughout the country were increased to 3.6 cents per mile. Applying this increase to complainant's passenger traffic would have resulted in an addition of \$5,535.79 for the first six months of 1920. Thus, by applying the present divisions on coal and the passenger fares authorized by us in *Ex Parte 74* to the traffic handled during this period, which was stated to have been a normal period, there would remain a net income from operations of \$26,657.53. Deducting from this amount the sum of \$7,113.94, which represents tax accruals, interest on bonded indebtedness, and miscellaneous interest, there would remain a balance of \$19,543.59, equal to \$39,087.18 a year, for return on the fair value of the property, and other necessary items of expense.

In its exhibit showing expenses for the first six months of 1920 complainant included the following: \$14,444.46 to meet bond maturities; \$718.88 per month for depreciation; and \$1,330 per month for wages of additional employees alleged to be necessary to operate the road with greater efficiency and safety. The meeting of bond maturities can not be considered an item of operating expense. Since the hearing wages and other items of expense generally have shown a downward trend. Moreover, it is apparent that the tonnage handled by the Marion in 1920 greatly exceeded the tonnage of 1919. And it may fairly be assumed that its tonnage has continued to move in increased volume.

We find that complainant's divisions of the joint rates on coal here involved have not been shown to have been or to be unjust, unreasonable, inequitable, or unjustly discriminatory. The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 1465.
EXPRESS CLASS RATES BETWEEN UNITED STATES
AND CANADIAN POINTS.

Submitted February 23, 1922. Decided March 17, 1922.

Class rates proposed by the American Railway Express Company for application to traffic between points in the United States and points in Canada found justified in so far as they affect the charges or divisions accruing for that part of the transportation between points in the United States and the international boundary.

H. S. Marx for American Railway Express Company; *J. H. Fishback* and *W. C. Muir* for Canadian National Express Company; and *G. F. Snyder* for Dominion Express Company.

C. J. Webber for United States Fisheries Association, Atlantic Coast Fisheries Company, and C. C. Robbins; *Sol Bromme* for Middle Atlantic Fisheries Association; and *Gifford, Hobbs & Beard* for Booth Fisheries Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

McCHORD, *Chairman*:

By schedules filed to become effective January 1, 1922, the American Railway Express Company proposed new class rates applicable on express traffic between all express stations in the United States and all points in Canada. Upon protests of numerous shippers of fish, operation of these schedules was suspended until May 1, 1922. Rates will be stated in dollars and cents per 100 pounds.

The proposed new rates would apply on all express traffic between the United States and Canada for which specific commodity rates are not provided. No protests have been received, except those noted above, and shipments of fish ordinarily move on commodity rates. At the hearing, a tentative agreement was reached between respondent and the fish interests, the substance of which is that the present specific rates for express transportation of fish have not been and will not be disturbed. Where regular and substantial movements of fish are made from points in Canada to points in the United States on which no commodity rates were applicable January 1, 1922, the respondent, by and with its Canadian connections, will establish commodity rates not in excess of the second-class rates in effect prior to that date. To this agreement the

Dominion Express Company, concurring in principle, added: Some of the old second-class rates were not remunerative and should not be continued, but that company will go as far as it can in the establishment of rates on fish just to itself and to the fish shippers. When this agreement had been reached all protestants withdrew from the hearing, and respondent, supported by its Canadian connections, proceeded to justify the proposed rates.

The rates suspended here are now in effect in Canada; on protest, the Board of Railway Commissioners of Canada having refused to suspend. The present situation, therefore, is that prepaid shipments southbound from Canada to the United States move on the rates scheduled in the suspended tariffs, whereas prepaid shipments northbound from the United States to Canada move on rates which were maintained by the carriers prior to January 1, 1922. For about two years past express carriers on both sides of the international boundary have demanded prepayment on all international shipments, in order to avoid complications due to fluctuation of exchange. This practice arose before the proposed rates were published and without reference thereto; it results in the condition above set forth.

In *Express Rates, Practices, Accounts, and Revenues*, 28 I. C. C., 131, we ordered the establishment of the block system of stating rates throughout the United States, and, beginning in 1916, rates between points in Canada and points in the United States were also published on the block system. The preceding tariffs were not all canceled for about a year, as the working out of the new rates required time. Thereafter, the Board of Railway Commissioners of Canada prescribed a system of block tariffs similar to that in effect in the United States, and a revision of international rates was commenced. Subsequently, express rates were established between points in the United States and points in Canada, based upon the lowest combination of rates via border transfer points from one block to another. Such lower combinations determined joint through rates, regardless of routing. This method was used in fixing the first-class rate; second-class rates were made about 75 or 80 per cent of the first-class rates thus obtained. The new international block tariffs, thus figured, named rates in dollars and cents; were not stated in scale numbers, but rates were governed by a tariff of graduated charges, from which rates on packages of less than 100 pounds could be figured; and the compilation was not completed until March, 1918. Since that time, there have been increases in express rates in Canada and in the United States, and these increases have served to disturb the international adjustment of rates and make a revision of them necessary in order to restore the original basis of lowest combination of locals. The proposed rates merely represent such a revision.

There have been three increases in express rates authorized within the United States: An increase of 10 per cent, effective July 15, 1918, authorized by us; an increase of three scale numbers in zone 1, and of two scale numbers in other zones, authorized by the Director General of Railroads, effective January 1, 1919; and a third increase, effective September 1 and October 13, 1920. In Canada, there was a revision of rates in September, 1919, which involved certain increases; and a second increase February 9, 1921. Not all of these increases have been reflected in international rates, although there have been three increases in such rates since July 1, 1918. International rates have kept pace with increases made within the United States, but still fail to reflect the increases granted within the Dominion of Canada, with the result that international rates have recently been upon an unjustifiable basis.

For example: Rates from Detroit, Mich., to points in Ontario are substantially less than rates from Windsor, Ontario, to the same destinations. Detroit is on the west bank of the Detroit River, and Windsor is immediately opposite on the east bank. Using first-class rates only, the present rate from Detroit to Hamilton, Ontario, is \$1.58; from Windsor, an intermediate point, it is \$1.90. From Detroit to Ottawa, Ontario, the rate is \$2.61; from Windsor to Ottawa it is \$3.50. From Detroit to Montreal, Quebec, the rate is \$2.96; from Windsor to Montreal it is \$4.05. These inconsistencies were brought to the attention of the Canadian board, and the carriers have attempted to correct them. The proposed rates add 25 cents per package or per 100 pounds to the rates from Windsor, this sum to represent the additional cost of handling across the boundary either by car ferry, wagon, or tunnel; and the charge for the additional service is made less than it actually is at Detroit, in order to approximate the average through more than 40 border junction points between the Pacific and Atlantic oceans. However, this charge is added to the Canadian local charge only from the block immediately adjacent to the border. From all other points in the United States to all points in Canada, the proposed rates are made in this way: The rate from point of origin to the nearest junction point within the United States is first found, to that rate, the rate from the nearest Canadian point to destination is added; and no charge is included in the joint rate for transfer across the border. From the sum of the locals to and from the international boundary, thus obtained, odd figures are dropped and rates stated in multiples of 5 cents. For instance: From New York, N. Y., to Suspension Bridge, N. Y., the first-class rate is \$2.14; from Niagara Falls, Ontario, to Toronto, Ontario, the rate is \$1.35. The present joint rate from New York to Toronto is \$3.16. The sum of the

two intermediates is \$3.49. The proposed rate is \$3.45. The present rate from New York to Montreal is \$2.61. The rate from New York to Rouse's Point, N. Y., is \$1.94, and the rate from Lacolle, Quebec, the next point beyond Rouse's Point, to Montreal, is \$1.10. The sum of these two rates would be \$3.04. The rate proposed is \$2.65, or only 4 cents advance over the present rate. It would seem to be unnecessary to follow all the details of this adjustment. Rates of express carriers within the United States, as they now are, are the result of the findings made by us and the orders of the Railroad Administration. Express rates in Canada are the result of specific orders of the Board of Railway Commissioners of Canada. What the proposed rates attempt to do is to establish international rates which shall not exceed rates to and from the international boundary as thus established, and which in many instances are less than the aggregate of such factors. Respondent admits the general doctrine that joint rates should ordinarily be less than the aggregate of the intermediate rates applicable to the through movement, but says that that doctrine is not in point in this proceeding, for the reason that in all instances they have omitted one factor of such aggregates in that no charge has been included for the transfer from the border point within the United States to the border point within Canada between which international business is necessarily exchanged. And they call attention to the additional expenses incurred by handling international shipments. Shipments from New York to Montreal were traced, showing the necessity for an export declaration, which the carrier must obtain from the shipper in order to comply with the requirements of the United States customs. In addition to this, there are the requirements of the Canadian customs to be met; increased clerical and messenger service; the giving of bonds by the express company to the United States and to the Dominion of Canada, conditioned on full compliance with all tariff and other regulations of the respective countries; and the extra service necessary in connection with shipments in bond sometimes entailing additional hauls to customhouses and clearance therethrough. Express rates within the bounds of the United States and of Canada are not made in contemplation of such extra services.

Charges on express matter weighing less than 100 pounds are governed by schedules graduated below the charges per 100 pounds. An exhibit introduced by respondent shows that the proposed rates result in many reductions and in no substantial increases in these schedules. It is not deemed necessary to set these package rates forth in detail, as the charge per 100 pounds is in all cases the base rate.

We must regard the local rates of express carriers between border points and other points in the United States as just and reasonable. We must accept rates between points wholly within the Dominion of Canada as just and reasonable. The respondent shows that this readjustment results in some reductions in rates; that in no instance do the rates proposed equal the aggregate of the intermediates; and that, excluding disposition of fractions, the divisions received by it are not in excess of its locals. We therefore find that the rates proposed have been justified, the divisions accruing for that part of the transportation between points in the United States and the international boundary being not in excess of rates prescribed or permitted by us for local hauls, and the order of suspension will be vacated.

68 I. C. C.

No. 11764.

IN THE MATTER OF INTRASTATE RATES WITHIN THE
STATE OF TEXAS.

Submitted February 1, 1922. Decided March 14, 1922.

Original order herein, 60 I. C. C., 421, modified so as to exclude from its provisions the rates on refined sugar, in carloads, from Sugarland, Tex., to Texas common points.

Earle B. Mayfield and Clarence E. Gilmore for Railroad Commission of Texas.

H. M. Garwood, S. C. Griffin, Robert Thompson, C. Schonfelder, jr., J. S. Hershey, Horace Booth, J. D. Sayers, N. A. Stedman, Frank Andrews, and C. H. Guion for respondents.

H. H. Haines for Sugarland Industries, and *J. A. Leffingwell* for Texas Chamber of Commerce.

REPORT OF THE COMMISSION ON FURTHER HEARING.

HALL, Commissioner:

In *Intrastate Rates within the State of Texas*, 60 I. C. C., 421, we found, among other things, that the increase made by respondents pursuant to our findings in *Ex Parte 74*, and then in effect in the western group, resulted in reasonable rates for interstate transportation within that group, and that the failure of respondents to increase correspondingly their rates for intrastate traffic within the State of Texas had resulted and would result in intrastate rates lower than the corresponding rates contemporaneously maintained on interstate traffic; in undue preference of persons and localities in intrastate commerce within that State; in undue prejudice to persons and localities in interstate commerce; and in unjust discrimination against interstate commerce.

Pursuant to those findings we required the respondents, by order dated February 12, 1921—

to establish, put in force, and maintain charges for freight service in intrastate commerce within the state of Texas which shall exceed the rates of said carriers in effect July 29, 1920, and applicable to such transportation in amounts corresponding to the increases heretofore made by said carriers, and now in effect under *Ex Parte 74*, in said carriers' charges for freight service in interstate commerce within the state of Texas and between points in the state of Texas and points in other states.

Increased intrastate rates were accordingly established and were generally made effective on March 18, 1921.

63 I. C. C.

By amendatory order of March 29, 1921, the following paragraph was added to our original order:

It is further ordered, That nothing in this order shall be construed as requiring any common carrier to establish, put in force, or maintain any rate, fare, or charge for the transportation of passengers or property in intrastate commerce which is greater than its corresponding rate, fare, or charge applicable to the transportation of passengers or property in interstate commerce from, to, or at the same points in effect on the date hereof, or greater than its corresponding rate, fare, or charge contemporaneously in effect and applicable to the transportation of passengers or property in interstate commerce.

For many years prior to Federal control the rates per 100 pounds on refined sugar, in carloads, from New Orleans, La., and Sugarland, Tex., to Texas common points, 183 miles or more from Sugarland, were 44 and 33 cents, respectively, a difference of 11 cents. Various increases made by the director general disrupted this adjustment, and on July 29, 1920, the rates were 66 and 41.5 cents, respectively, a difference of 24.5 cents. Under *Ex Parte 74* the New Orleans rate was increased 35 per cent to 89 cents. The Sugarland rate was increased 33½ per cent to 55.5 cents under authority of the Railroad Commission of Texas. Pursuant to our order herein the latter rate was increased to 56 cents. On October 25, 1921, the New Orleans rate was reduced to 67 cents, but no reduction was made in the Sugarland rate, thus restoring the 11-cent difference in the rates which were in effect prior to June 25, 1918.

By complaint filed with the Railroad Commission of Texas on November 9, 1921, the Sugarland Industries, operating a sugar refinery at Sugarland, and the Sugarland Railway Company attacked the rates from Sugarland. Hearing was had before the Railroad Commission of Texas, and, objection being made by respondents to the jurisdiction of that commission, the matter was brought to our attention. We thereupon reopened this proceeding for the purpose of considering the reasonableness, relationship, and propriety of the rates on refined sugar, in carloads, from Sugarland to Texas common points, including the ascertainment of what interstate rates on refined sugar, in carloads, correspond to the intrastate rates on the same commodity from Sugarland to Texas common points. By consent of all parties, including the respondents, the record of the hearing before the Texas commission has been made a part of the record in this proceeding, and no further hearing on our part has been deemed necessary.

About one-fourth of the sugar consumed in Texas comes from the refinery at Sugarland. The movement is considerable, amounting in 1920 and 1921 to 121,726,643 and 106,037,946 pounds, respectively. The other three-fourths comes from Louisiana, Atlantic seaboard territory, and the beet-sugar districts of Colorado and other western

States. New Orleans is the principal refining point in Louisiana. Sugar is sold in Texas on the basis of the New Orleans price plus the freight rate. The New Orleans rate applies from other refineries in Louisiana. Beet sugar usually sells slightly under cane sugar.

The following table shows the rates in effect from different territories of origin on the dates shown:

From—	July 29, 1920.	August 26, 1920.	October 25, 1921.	Present.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
New Orleans.....	66	89	67	67
Sugarland.....	41.5	55.5	56	56
California.....	107	142.5	121	121
Colorado.....	71	96	72	72
Utah.....	86	114.5	93	87
Idaho.....	86	114.5	93	87

It will be seen that from New Orleans and from Colorado, Utah, and Idaho the interstate rates to Texas common points now in effect represent an increase of only 1 cent over the rates in effect on July 29, 1920. Under the terms of our order in this proceeding if the rates of 67 and 72 cents now in effect from New Orleans and Colorado, respectively, had been in effect on the date of that order the respondents would not have had authority to increase the rate from Sugarland by more than 1 cent over the rate in effect on July 29, 1920, whereas under permission of the Texas commission they did increase the rate by 14 cents. Respondents participate in the rates from New Orleans, Sugarland, Colorado, Utah, and Idaho.

There are also interstate rates on refined sugar, in carloads, applying from Houston and Galveston, Tex., to Texas common points. They are on the same scale of rates as that in effect from Sugarland. No refineries are located at Houston or Galveston, and the interstate and intrastate rates from those points are the same. The rates are used in connection with shipments moving by water from refineries along the Atlantic seaboard. The extent of this movement is not disclosed by the record, but it seems clear that, except at points along the Gulf coast, the real competition which the Sugarland refinery must meet comes from the Louisiana refineries and the beet-sugar refineries of Colorado and other western States.

The evidence introduced at the original hearing of this proceeding with respect to sugar rates dealt primarily with the relationship of the rates between points in Texas and between points in Louisiana and points in Texas. In *New Orleans Joint Traffic Bureau v. A. & S. Ry. Co.*, 52 I. C. C., 23, we found that a carload minimum of 36,000 pounds on sugar from New Orleans and points taking the same rates to Texas destinations was reasonable and that New Orleans and points taking the same rates were subjected to undue prejudice and

disadvantage by the contemporaneous maintenance of a carload minimum of 30,000 pounds from Sugarland to the same destinations.

The principal reason given by the New Orleans carriers for reducing the rate from New Orleans is the desire to restore the 11-cent difference which existed prior to June 25, 1918. A witness for the Gulf Coast Lines, one of the New Orleans carriers initiating the reduction from that point, urges that the 67-cent rate is a reasonable rate. Their action was opposed by certain of the respondents who maintain that the Sugarland rates should be reduced to correspond with the reductions made from New Orleans. Since the hearing they have filed a tariff making reductions, effective April 5, 1922.

It is clear that the rates from New Orleans and points taking the same rates to Texas common points most nearly correspond to the intrastate rates from Sugarland. It is equally clear that respondents by their voluntary reduction of the interstate rates not only from Louisiana, but from Colorado and other western States which compete with Sugarland, have removed the undue preference, undue prejudice, and unjust discrimination against interstate commerce, which we found to exist as a result of their failure to increase the rates from Sugarland in amounts corresponding to the increases theretofore made in their interstate rates and in effect when our original order was entered. That order will therefore be modified so as to exclude from its provisions the rates on refined sugar, in carloads, from Sugarland, Tex., to Texas common points.

68 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1460.

COAL FROM KENTUCKY, TENNESSEE, AND WEST VIRGINIA MINES TO SOUTHERN RAILWAY POINTS IN INDIANA AND ILLINOIS.

Submitted January 26, 1922. Decided March 18, 1922.

Proposed reduced rates on bituminous coal from points on the Chesapeake & Ohio Railway in eastern Kentucky and West Virginia, and consequent proposed reduced rates on the same commodity from districts in northern Tennessee, eastern Kentucky, and southwestern Virginia on the Louisville & Nashville Railroad to points west of Louisville, Ky., on the St. Louis division of the Southern Railway in Indiana and Illinois, and to St. Louis, Mo., found justified. Orders of suspension vacated.

J. S. Patterson for Chesapeake & Ohio Railway Company; *J. M. Dewberry* for Louisville & Nashville Railroad Company; *Charles R. Webber* and *Francis R. Cross* for Norfolk & Western Railway, Toledo & Ohio Central Railway, Kanawha & Michigan Railway, Pennsylvania Railroad, and Baltimore & Ohio Railroad companies; and *J. F. Youse* for Toledo & Ohio Central, Kanawha & Michigan Railway, and Zanesville & Western Railway companies.

James D. Francis, *A. R. Yarbrough*, and *E. J. McVann* for Kanawha Coal Operators' Association, Logan Coal Operators' Association, and Northeast Kentucky Coal Association; *E. L. Greever* and *E. J. McVann* for Pocahontas Operators' Association; and *S. C. Higgins* for New River Coal Operators' Association.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.
MEYER, Commissioner:

By schedules filed to take effect December 25, 1921, the Chesapeake & Ohio Railway, herein called respondent, proposes to reduce its rates on bituminous coal from points on its Big Sandy division in eastern Kentucky to St. Louis, Mo., to meet the rate applicable via the line of the Louisville & Nashville Railroad from its contiguous McRoberts district in eastern Kentucky to St. Louis, and to apply that rate at noncompetitive intermediate points in Indiana and Illinois west of Louisville, Ky., on the St. Louis division of the Southern Railway. To preserve origin-point differentials the respondent also proposes reductions in rates on coal from the Kanawha and New River districts to the same destinations. Protests were made by the

Baltimore & Ohio, certain New York Central lines operating in western West Virginia and southern Ohio, the Pennsylvania, and the Norfolk & Western, those carriers being apprehensive that should the reduced rates become effective corresponding reductions would be necessary from the districts they serve.

The proposal to reduce its rates on coal was submitted by respondent to the Central Freight Association coal, coke, and iron ore committee, composed of representatives of all lines serving Ohio and the crescents, and approved. The protests were subsequent to that approval.

To align its rates with those proposed by the respondent to points between New Albany, Ind., and East St. Louis on the St. Louis Division of the Southern, the Louisville & Nashville proposes to reduce its rates to such points from districts served by it in northern Tennessee, southeastern Kentucky, and Virginia. Other than that its rates should be aligned with those of the respondent, the Louisville & Nashville rests its case on that of the respondent, conceding that the reductions proposed by it must stand or fall dependent upon whether or not the reductions proposed by respondent are justified. The operation of the schedules was suspended until April 24 and May 29, 1922, respectively. Certain associations, members of which operate mines in the districts affected or which may be affected, appeared in behalf of the reductions. Rates are stated herein in amounts per ton of 2,000 pounds.

The map accompanying our report in *Bituminous Coal to C. F. A. Territory*, 46 I. C. C., 66, resubmitted in this proceeding, is referred to for the location of the various districts mentioned herein. The present rates of the Louisville & Nashville from districts in eastern Kentucky, Tennessee, and southwestern Virginia to St. Louis, applicable via its line only, conform to the bases outlined in *Coal from Kentucky, Tennessee, and Virginia*, 60 I. C. C., 166; that is, since March 3, 1921, the rates from the Jellico and Hazard districts and from the Big Stone Gap and McRoberts districts, to St. Louis, have been, respectively, \$3.32 and \$3.47, and those are the rates which are proposed to the points between New Albany and East St. Louis on the St. Louis division of the Southern.

The present rates from the Ohio districts, Inner Crescent, and Outer Crescent to East St. Louis and St. Louis, which is the only important territory of consumption to which the reduced rates are proposed, are, respectively, \$3.88, \$4.13, and \$4.28. The McRoberts, the Big Sandy, and the Kanawha districts are parts of the Inner Crescent; the New River district is part of the Outer Crescent, taking differentially adjusted rates to central territory east of the Indiana-Illinois State line. The respondent proposes to reduce its present rates

of \$4.13 from groups 2 and 3 of the Kanawha district, group 4, the Kentucky district, and group 5, the Big Sandy district, to \$3.47 to equal the rate of the Louisville & Nashville from group 4, the McRoberts district, to St. Louis; to reduce its present rate of \$4.28 from the New River district to \$3.62, the latter reduction being proposed to preserve the relationship between the Inner and Outer Crescent in the rates to central territory.

The Louisville & Nashville opened its eastern Kentucky coal fields in 1913, and the rate to St. Louis, applicable via its own line or later via the Louisville, Henderson & St. Louis Railway to Evansville, Ind., and the Louisville & Nashville beyond, was made 15 cents higher than the rate from the Jellico-Middleboro district and the same as the rates from groups 2, 3, 4, and 5 on the line of the respondent. Due to competition of water-borne coal from Pittsburgh to St. Louis, and a combination of rates via Louisville lower than the through rate, the Louisville & Nashville on May 15, 1915, reduced its rates from these districts to St. Louis. The respondent did not meet this reduction from its Kentucky districts. *Ex Parte 57*, general order No. 28, readjustments subsequent thereto, the general increases of 1920, and *Coal from Kentucky, Tennessee, and Virginia, supra*, changed the former parity of rates from the Louisville & Nashville mines in the McRoberts district and the respondent's mines on its Big Sandy division to a present spread of 66 cents. The average distance from the McRoberts district to St. Louis is 606 miles; from the Big Sandy district, 584 miles. The transportation conditions from the two districts to St. Louis are substantially similar. The St. Louis division of the Southern parallels the line of the Louisville & Nashville between Louisville and East St. Louis. The deliveries to St. Louis are upon the terminal lines there. The two origin districts are about 1.5 miles apart, being located on opposite sides of a mountain through which a tunnel has been driven. Similar kinds of special-purpose coals, largely used in the somewhat recently developed by-product plants of St. Louis and near-by points, are mined in the two districts by companies which are operating in both districts.

The respondent states that its proposal to meet the rate of the Louisville & Nashville to St. Louis will create no condition which does not already exist; that is, the lower rates of the Louisville & Nashville to St. Louis have been in effect for some time. It is also asserted by the respondent that inasmuch as the proposed rates are made applicable via Louisville only, they will not disturb, any more than the rates of the Louisville & Nashville have disturbed, the rates applicable via more northerly routes from other districts in the Crescent to St. Louis. The normal routes of lines, other than those of the respondent and of the Louisville & Nashville, serving the Cres-

cent are through important coal-consuming points in central territory. The St. Louis division of the Southern traverses the hearts of the Indiana and Illinois coal fields. In *Coal from Kentucky, Tennessee, and Virginia, supra*, we stated that, exclusive of the rates on lake-cargo coal, St. Louis, a large coal-consuming point and one of the gateways upon which combination rates on traffic for beyond are based, is perhaps the most noteworthy exception to the general basis from eastern Tennessee, eastern and southeastern Kentucky, and southwestern Virginia, and from the Kanawha district to central territory, St. Louis was specifically referred to as nonaffected territory in *Bituminous Coal to C. F. A. Territory, supra*.

Protestants state:

No doubt operators in the Pittsburgh, Connellsville, Fairmont, and eastern Ohio fields, as well as that part of Kanawha district served by K. & M. Railway, will also demand similar reductions; it being a fact that the average distance from the Ohio fields to the destination territory involved is less than from the C. & O., Kanawha and New River districts, while the distance from Pittsburgh, Connellsville, Fairmont and other districts which are part of the Inner Crescent, is substantially the same as the distances from the C. & O. mines in the Kanawha field.

Obviously this is bound to affect the entire rate adjustment on coal, not only to St. Louis and intermediate points, but also to other points in Indiana and Illinois, more particularly as the routes of some of the roads would carry them through districts which now take higher rates than those published by the C. & O. to St. Louis. This, in turn, would affect the rate adjustment to Chicago territory, and on shipments for beyond would disrupt the combination rates via Chicago and Upper Mississippi River Crossings on the one hand, as compared with St. Louis on the other.

Notwithstanding the maintenance by the Louisville & Nashville of lower rates to St. Louis, its rates to Chicago are the same as from other points in the crescents, and its rates to the upper Mississippi River crossings do not reflect the reduction to St. Louis.

The average short-route distances from districts comprised in the Outer Crescent to St. Louis are, in miles, Meyersdale, 745; Cumberland-Piedmont, 761; New River, 622; and Pocahontas, Tug River, and Clinch Valley, 664. The average distance from the Pittsburgh District to St. Louis is 665 miles. The proposed rates from the New River and Big Sandy districts would yield ton-mile earnings of 5.9 mills; from Kanawha, 6 mills, about the same as those yielded from the present rates of the Louisville & Nashville from its groups 1, 2, 3, and 4 to St. Louis.

There has been no important movement of coal from the Ohio mines to St. Louis or beyond from 1903 to 1921. Of a total of about 3,440,000 tons of coal shipped during the period from April, 1917, to November, 1921, from Pennsylvania, West Virginia, eastern Ken-

tucky, Virginia, and Tennessee to East St. Louis, St. Louis, and beyond, over 2,000,000 tons moved from points on the Louisville & Nashville, 550,000 tons from points on the line of the respondent, 480,000 tons from points on the Norfolk & Western, 67,000 tons from points on the Western Maryland, 38,000 tons from points on the Pennsylvania, 7,500 tons from points on the Baltimore & Ohio, and only in the year 1920 and 11 months of 1921, about 38,000 tons from points on the Kanawha & Michigan.

Appendix A to *Bituminous Coal to C. F. A. Territory, supra*, is a list of the originating carriers serving various coal districts in the crescent and Ohio groups. The Baltimore & Ohio has three disconnected subsidiary companies which operate in the Elkhorn District; the Long Fork Railway, Miller's Creek Railroad, and Sandy Valley & Elkhorn Railway. The proposed reductions do not apply from points on those roads. Joint rates are maintained by the Baltimore & Ohio from the Cumberland and West Virginia districts to East St. Louis via the Southern and the Louisville & Nashville, but the Norfolk & Western is not a party to joint rates from either its Pocahontas or Thacker districts in connection with the Southern Railway to that point. The Kanawha & Michigan serves the Kanawha district, and it and its affiliated lines operate through the Ohio groups.

Briefly, the protestants are of the view that instead of the rates of the respondent from points on its Big Sandy division to St. Louis being reduced, the rates of the Louisville & Nashville should be increased to place them on a parity with those of the respondent. Could the reduced rates proposed be confined solely to the eastern Kentucky fields and not be extended to the Kanawha and New River districts, the protestants would have no objection to the reduced rates becoming effective.

The rate adjustment considered in *Bituminous Coal to C. F. A. Territory* is now before us in No. 12698, *Southern Ohio Coal Exchange v. C. & O. Ry. Co.* and we have instituted an investigation, No. 12851, *In the Matter of Intrastate Rates on Bituminous Coal within the State of Ohio*. Those cases were consolidated for hearing with *Coal from Detroit, Toledo & Ironton R. R. Mines*, 64 I. C. C. 564.

The primary purpose of the respondent is to meet the rate of the Louisville & Nashville, for which there appears to be ample justification. The maintenance of the relationship heretofore existing between the Big Sandy district, and the Kanawha and New River districts would require the reductions proposed from those districts. Because all of the rates from the crescents to St. Louis

are not involved in this proceeding does not warrant our finding the proposed rates not justified.

We find that the schedules under suspension have been justified. An order vacating the order of suspension and discontinuing the proceeding will be entered.

No. 11578.

JACOB E. DECKER & SONS

v.

DIRECTOR GENERAL, AS AGENT, MINNEAPOLIS & ST.
LOUIS RAILROAD COMPANY, ET AL.

Submitted June 10, 1921. Decided March 18, 1922.

1. Rates on fresh meats and packing-house products, in straight or mixed carloads, from Mason City, Iowa, to Minneapolis, Minn., found not unduly prejudicial.
2. Rate on packing-house products from Mason City to Duluth, Minn., found unduly prejudicial to the extent that it exceeds the rates contemporaneously in effect from Chicago, Ill., and Milwaukee and Cudahy, Wis., to the same destination, and to the extent that it exceeds the rate contemporaneously in effect from St. Paul, Minn., by more than 15 cents. Undue prejudice ordered removed, and reparation denied.
3. Fourth section relief denied.

C. M. Updegraff and R. J. Edwards for complainant.

M. M. Joyce, O. W. Dynes, W. F. Dickinson, A. A. McLaughlin, D. F. Lyons, M. L. Countryman, Frank H. Towner, R. L. Kennedy, and A. H. Lossow for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner. We have reached conclusions differing somewhat from those which he recommended.

Complainant, a corporation engaged in the meat-packing business at Mason City, Iowa, alleges by complaint filed June 23, 1920, that the rates charged by defendants for the transportation of fresh meats and packing-house products, in carloads, from Mason City, to Minneapolis, Minn., and of packing-house products, in carloads,

from Mason City to Duluth, Minn., were and are unduly prejudicial to complainant and unduly preferential of complainant's competitors at Kansas City, Mo., South Omaha, Nebr., Sioux City, Iowa, Sioux Falls, S. Dak., Watertown, S. Dak., Cudahy, Wis., Milwaukee, Wis., Chicago, Ill., and St. Paul, Minn. We are asked to prescribe nonprejudicial rates for the future and to award reparation. Rates are stated in cents per 100 pounds, and apply on the commodities named in straight carloads or in mixed carloads under applicable mixing provisions.

In *Decker & Sons v. Director General*, 59 I. C. C., 67, we found that the rates here assailed were not unreasonable, whereupon the present complaint was filed. The evidence in that proceeding was made a part of the record in this. Little new evidence was presented, except revised exhibits showing the rates as increased August 26, 1920.

The present rates from Mason City to Minneapolis are 31 cents on fresh meats and 25.5 cents on packing-house products. The present rate to Duluth on packing-house products is fifth class, 37 cents. Rates suggested by complainant to remove the alleged undue prejudice are 25.5 cents on fresh meats and 22.5 cents on packing-house products to Minneapolis, and 34 cents on packing-house products to Duluth.

The rates to Minneapolis will first be considered. Complainant contends that, even if due allowance is made for the shorter distance from Mason City to Minneapolis, the ton-mile earnings under the rates attacked are excessive in comparison with those from other cities to the same market. Its comparisons include Marshalltown, Cedar Rapids, Des Moines, and Ottumwa, Iowa, points which are not covered by the allegation of undue preference and from which, it is conceded, there is ordinarily no movement to Minneapolis of these commodities. On the other hand the comparisons do not include Austin, Albert Lea, and Winona, producing points in Minnesota, a few miles nearer Minneapolis than Mason City, and from which, according to defendants, complainant meets its chief competition at that market. Complainant directs attention to the fact that the rates from these points are intrastate, and urges that they are higher than interstate rates for like distances and hence not fairly comparable with the rates from Mason City. Including Austin, Albert Lea, and Winona, because of their active competition with Mason City, and eliminating points from which there is no substantial movement, the rates and ton-mile earnings are as follows:

To Minneapolis from—	Distance.	Rates.		Ton-mile earnings.	
		Fresh meats.	Packing-house products.	Fresh meats.	Packing-house products.
	Miles.	Cents.	Cents.	Mills.	Mills.
Austin, Minn.....	103	29	21	56.3	40.8
Albert Lea, Minn.....	107	29	21.5	54.2	40.2
Winona, Minn.....	114	29	21.5	50.9	37.7
Mason City, Iowa.....	144	¹ 31	¹ 25.5	43.1	35.4
Do.....	144	² 25.5	² 22.5	35.4	31.2
Watertown, S. Dak.....	214	34.5	31	32.2	29
Sioux Falls, S. Dak.....	231	34.5	31	30	26.8
Sioux City, Iowa.....	260	34.5	31	26.5	23.8
Milwaukee, Wis.....	324	46	34	28.4	21
Cudahy, Wis.....	331	46	34	27.8	20.5
South Omaha, Nebr.....	351	40	40	22.8	22.8
Nebraska City, Nebr.....	³ 400	40	40	20	20
Chicago, Ill.....	407	46	34	22.6	16.7
St. Joseph, Mo.....	475	43	40.5	18.1	17.1
Kansas City, Mo.....	494	43	40.5	17.4	16.4

¹ Present rate.² Proposed rate.³ Via C., B. & Q. and C. G. W.

Defendants state that the rates from Watertown, Sioux Falls, and Sioux City are grouped, as are those from Chicago, Cudahy, and Milwaukee. In *Decker & Sons v. Director General, supra*, with reference to similar comparisons, we said "The rates cited by complainant disclose numerous departures from the ideal adjustment under which the ton-mile earnings appropriately decrease with the increase in distance." But we also said in that case "Ton-mile earnings alone are not controlling as competition between shippers, cities, and railroads may often force and justify departures from a mathematical decrease in ton-mile earnings as the hauls increase." While the progression of rates in the above table is not as regular as would result from the use of a distance scale, they are fairly well aligned and afford no adequate basis for a finding that the adjustment is unduly prejudicial to Mason City.

Complainant urges that its rates on fresh meats and packing-house products to Minneapolis are relatively so high as compared with the rate on hogs that packers at South St. Paul have an unjust advantage. This is a situation not presented by the complaint and can not be considered in this proceeding.

The undue prejudice to Mason City claimed to exist in connection with the rates applicable on packing-house products to Duluth is based upon the following comparisons, the rates shown being fifth-class rates, except as noted:

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To Duluth from—	Distance.	Rates.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
St. Paul, Minn.....	150	¹ 17	22.7
Mason City, Iowa.....	288	² 37	25.7
Do.....	288	² 34	23.6
Waterloo, Iowa.....	353	37	21
Marshalltown, Iowa.....	390	37	19
Sioux City, Iowa.....	416	¹ 44	21.2
Des Moines, Iowa.....	408	44	21.6
Cedar Rapids, Iowa.....	406	37	18.2
Chicago, Ill.....	466	¹ 34	14.6
Ottumwa, Iowa.....	491	44	17.9
South Omaha, Nebr.....	499	⁴ 46	18.4

¹ Commodity rate.
² Present class rate.

³ Proposed commodity rate.
⁴ Class and commodity rates equal.

As in the case of the rates from Mason City to Minneapolis, complainant contends that these rates are not properly related in accordance with the principle that ton-mile earnings should decrease as the distance increases, but the apparent inconsistencies in the alignment are due mainly to the inclusion of rates from points from which there is admittedly no movement of packing-house products to Duluth. Special emphasis is laid upon the rate of 34 cents from Chicago, 466 miles, as compared with the rate of 37 cents from Mason City, 288 miles. Over one route authorized by the existing tariffs this situation results in a departure from the fourth section of the interstate commerce act which is protected by an appropriate application. This application was not set for hearing in connection with the instant case, but when the matter was presented at the hearing the carriers attempted no defense of the departure. While the rate from Chicago applies from a rather extensive origin group, defendants do not emphasize this fact, and if there is sound basis for this grouping, it was not developed of record.

Complainant shows that to Duluth the fresh-meats rates and the class rates from Chicago, and points taking the same rates to Duluth are the same as from Mason City, except the third-class rates which slightly favor Mason City. Defendants assert that rates generally from Chicago territory are low because of water competition on the Lakes, but it was conceded that fresh meats and packing-house products are not shipped by water from Chicago to Duluth.

Defendants urge that all of complainant's competitors are at points from which the rates are properly aligned, and in their exhibits, which include rates from such competing points in Minnesota, the ton-mile earnings under the Mason City rate are not shown to be substantially out of line with the general adjustment. One conspicuous exception is the rate from St. Paul to Duluth, under which the revenue per ton-mile is less than under the rate from Mason City for almost twice the distance. The extent of the movement from St.

Paul to Duluth is not shown of record, but it is evident that complainant's competitors at St. Paul have the opportunity to ship to that market at rates relatively more favorable. While complainant admits that the St. Paul-Duluth rate is somewhat subnormal in comparison with rates from the other points mentioned, there is nothing of record which justifies the present relationship existing between the rate from St. Paul and the rate from Mason City. It should be noted that from Mason City the fifth-class rate applies, while from St. Paul a commodity rate is published which is but 59 per cent of the fifth-class rate of 28.5 cents in effect from that point.

This special commodity rate from St. Paul applies from but a few other points in the immediate vicinity, while the fifth-class rate from Mason City is applicable from many other and more distant points. Neither the reasons for the grouping in the case of the Mason City rate nor the absence of grouping in the case of the St. Paul rate were shown of record.

Defendants contend that the situation is not one which can properly be reached by a finding of undue prejudice, "for the reason that the Mason City lines have no control over rates from St. Paul to Duluth, they being fixed by lines which do not serve Mason City, and no line reaching Mason City can handle or participate in traffic from South St. Paul to Duluth." The lines serving St. Paul or South St. Paul are parties to the joint fifth-class rate from Mason City to Duluth under which complainant's traffic moves and they are defendants herein.

We find that the rate on packing-house products, in carloads, from Mason City, Iowa, to Duluth, Minn., was, is, and for the future will be, unduly prejudicial to complainant to the extent that it exceeded or exceeds the rates contemporaneously in effect on like traffic from Chicago, Ill., Milwaukee, and Cudahy, Wis., to the same destination, and to the extent that it exceeds the rate contemporaneously in effect for interstate application on like traffic from St. Paul, Minn., to the same destination by more than 15 cents per 100 pounds; but that the rates assailed from Mason City to Minneapolis, Minn., were not, and are not, unduly prejudicial to complainant. Compliance with this finding will not necessarily require a reduction in the rate from Mason City to Duluth.

The undue prejudice found herein is not shown to have resulted in damage to complainant and reparation is denied. Orders will be entered requiring the removal of the undue prejudice herein found to exist, and denying the fourth section relief in connection with the rate from Chicago to Duluth, as herein indicated.

HALL, *Commissioner*, dissenting in part:

The majority find that the fifth-class rate on packing-house products from Mason City to Duluth is unduly prejudicial. From that finding I dissent. The rate is a group rate. It applies from other Iowa points, including several at which packing plants are operated, one of them 122 miles southeast of Mason City. It applies to Duluth Group D, which is extensive, although not coterminous with that on traffic from the Chicago group of origin. The latter embraces the southern half of Wisconsin, that part of Illinois north of Kankakee, Streator, and Rock Island, and points in Iowa on the west bank of the Mississippi River from Davenport to Dubuque, inclusive. The Chicago and Duluth groups approach within 150 miles of each other in the neighborhood of St. Paul.

Complainant ignores the group feature, and confines its proofs to comparisons of rates from and to selected points of origin and destination. Duluth and Chicago are nearly, if not quite, the most widely apart of any points in their respective groups. Such comparisons are not helpful. They do not prove that the rates from and to the different groups are unlawful, or that the groups should be disrupted. The rate from St. Paul to Duluth, by which the relation prescribed is, in part, to be measured, is not grouped and applies only from St. Paul, South St. Paul, and a few near-by points.

No harm is shown to have resulted from the rate adjustment.

Complainant's witness testified that its competition at Duluth comes from packing houses at Chicago, Milwaukee, the Twin Cities, and other points, but on cross-examination admitted that he had no idea as to the extent or volume of that competition, and that what he had said on that point was merely a guess. The carload shipments of fresh meats and packing-house products to Duluth during the first and third quarters of 1919 aggregated 75 from Mason City and 8 from Chicago. The number from St. Paul was not stated. Defendants' witness also gave figures of shipments to the Twin Cities, and, with reference to all the figures given, said, "considering the total from all points, two-thirds was fresh meat and one-third was packing-house products." The competition from Chicago on packing-house products which Mason City encountered at Duluth could hardly have been substantial. We have found that the rate here assailed is not unreasonable and on this record it is not otherwise unlawful. The complaint should be dismissed.

No. 12513.¹

CARNIE-GOUDIE MANUFACTURING COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 14, 1921. Decided March 7, 1922.

Rates and ratings on tents, in carloads, from certain Army camps and supply bases to Kansas City, Mo., found not unreasonable or otherwise unlawful. Complaints dismissed.

J. H. Tedrow and T. G. Whitsett for complainant.

R. W. Fyfe, W. E. Prendergast, John N. Steadwell, and A. H. Greenly for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, purchases and resells used Army goods. By complaint filed February 26, 1921, it alleges that the third-class rates assessed on 68 carloads of "canvas in the form of tents" shipped during 1919 and 1920 from certain Army camps and supply bases to Kansas City, Mo., were unreasonable, unjustly discriminatory, and unduly prejudicial. The prayer is for reparation and the establishment of sixth-class ratings in official and southern territories and class-A rating in western.

In these territories tents, new and old, with or without fixtures, are rated third class in carloads. Complainant does not question the reasonableness of this rating on new tents. Ratings are asked for goods rejected and sold by the Government, and not for second-hand tents generally.

Complainant describes these shipments as "old tents and other canvas goods condemned by the United States government as unserviceable for further military use." The goods purchased were marked "I. C.," that is, inspected and condemned, and were classi-

¹ This report also embraces No. 12513 (Sub-No. 1), *Carnie-Goudie Manufacturing Company v. Director General, as Agent, et al.*

fied as "(C) Property in such condition as to justify its reclamation, or having a good salable value without reclamation," or as "(D) Used material which has lost its original identity." The goods were purchased both by the pound and piece, about 85 per cent of the material being in the form of tents, the balance consisting of strips of canvas and parts of tents. At the time of the hearing three-fourths of the material had been disposed of as follows: 35 per cent had been repaired in complainant's factory and sold as reclaimed Army tents at about one-fourth the price of new tents; 25 per cent had been cut up and made into tarpaulins, wagon covers, etc., and sold at about one-eighth the value of new goods, and 40 per cent had been or will be sold as rags or paper stock.

Complainant's case is based on the relative values of the used and new commodities as described, and on a comparison of the respective transportation services.

The average value of the tents was 13.5 per cent of that of new tents; the average value of the goods was \$8 per 100 pounds as compared with \$75.50 for new canvas. The pyramidal tents, which constituted 75 per cent of those purchased, were valued at \$2,400 a carload. A like carload of new tents was worth \$33,000.

In the trade a complete tent is understood to include not only the canvas but the necessary stakes, poles, and guy ropes. Only two of these shipments included stakes and poles, and fully 50 per cent of the guy ropes had been removed, were broken, or had rotted off. New tents are easily torn, discolored, or otherwise damaged, and in order to prevent chafing must be packed in bags and loaded in waterproof cars free from nails, bolts, or other projections. These tents could be loaded in any kind of closed car if the roof were tight, and their liability to damage was slight as compared with that of new tents. Loss and damage claims had been filed on two of these shipments which moved in cars said to have had faulty roofs.

Reference is made to the practice of according ratings on old lower than on new barrels, sacks, felt hats, phonograph records, and tires. The reasons for low ratings on returned carriers have been frequently referred to by us. Why lower ratings have been established on the other articles mentioned is not explained of record. Complainant lays considerable stress on the fact that old tents, when shipped with Chautauqua outfits, are given lower ratings than new tents. Chautauqua outfits in carloads, minimum 24,000 pounds, are rated third class in official classification, fourth class in southern, and fifth class in western. The average weight of such an outfit is about 16,000 pounds, and the poles, wooden platforms, benches, chairs, etc., represent from 75 to 80 per cent of the weight and about 60 per cent

of the value. The movement of Chautauqua outfits is special and not comparable with that of used tents.

In several cases we have found that it would be difficult, without affording an easy and convenient means for misbilling and discrimination, and impracticable, to establish ratings on damaged, used, or secondhand articles different from those on like articles new. *Hirsch & Sons Iron & Rail Co. v. W., B. & A. Electric R. R. Co.*, 26 I. C. C., 480; *Danciger v. P., C., C. & St. L. Ry. Co.*, 29 I. C. C., 99.

Complainant admits that 85 per cent of the material purchased was in the form of tents, that a considerable portion after being repaired was sold as tents, and that some of the cars contained new tents which had never been used and were still in the original bales.

We find that the rates and ratings assailed were not and are not unreasonable or otherwise unlawful. The complaints will be dismissed.

68 I. C. C.

No. 12046.

ARMOUR & COMPANY

v.

WABASH RAILWAY COMPANY, DIRECTOR GENERAL,
AS AGENT, ET AL.

Submitted December 21, 1921. Decided March 7, 1922.

Rate on fresh meats, in straight or mixed carloads, from Chicago, Ill., to Gary, Ind., found unreasonable. Reparation awarded.

Paul E. Blanchard for complainant.

R. D. Rynder for Swift & Company, intervener.

Royal McKenna for director general, as agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner. The case was orally argued before us.

Complainant and Swift & Company, intervener, are corporations operating packing houses at Chicago, Ill. By complaints filed December 6, 1920, and February 9, 1921, they allege that defendants' rates on fresh meats, in straight or mixed carloads, from Chicago to Gary, Ind., were unjust and unreasonable from January 1, 1918, to March 15, 1919, inclusive. Reparation to the basis of a commodity rate of 17 cents established March 17, 1919, is asked on shipments made subsequent to June 25, 1918. Unless otherwise indicated, rates are stated in cents per 100 pounds.

The shipments moved over the Chicago Junction and the Wabash, 31 miles. Charges were collected at a rate of 21.5 cents. A commodity rate of 30 cents was applicable, and the shipments were undercharged. Rates over other routes were lower, notably one of 15 cents over the Baltimore & Ohio, but Wabash delivery was more convenient.

Rates to Gary from competitive points in Iowa, Missouri, Minnesota, and Indiana, for distances of from 181 to 451 miles, were lower than from Chicago. For example, rates of 17 and 18 cents applied from Cedar Rapids, Iowa, 250 miles, and St. Louis, Mo., 316 miles, respectively. The rate from Chicago to Logansport, Ind., 289 miles,

and to Clarke Junction, Ill., an intermediate point within the Chicago switching district, only about 3.5 miles from Gary, was 22.5 cents. To other Chicago switching-district points for distances of from 18 to 32 miles, a charge of \$12 per car of 60,000 pounds applied. A rate of 15 cents also applied from Chicago to Joliet, 37.5 miles, and to numerous other Illinois points for comparable distances.

We find that the applicable rate was unreasonable to the extent that it exceeded 17 cents per 100 pounds; that Armour & Company and Swift & Company made the shipments as described and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that they are entitled to reparation, with interest. They should comply with Rule V of the Rules of Practice. Collection of the undercharges should be waived.

68 I. C. C.

No. 12563.

HEALY & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI, KANSAS
& TEXAS RAILWAY COMPANY, ET AL.

Submitted December 5, 1921. Decided March 7, 1922.

Rate applicable on stock cattle, in carloads, from Kansas City, Mo., to Oklahoma City, Okla., found unreasonable. Defendants directed to waive collection of undercharges. Complaint dismissed.

H. D. Driscoll for complainants.

R. C. Trovillion for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are John, Ed, George, and Emmitt Healy and A. A. Ford, copartners, dealing in cattle at Oklahoma City, Okla. By complaint filed February 28, 1921, they allege that the rate of 35 cents applicable on four cars of stock cattle shipped from Kansas City, Mo., to Oklahoma City in February, 1920, was unreasonable to the extent that it exceeded the rate of 26.5 cents subsequently established, and in violation of the fourth section of the interstate commerce act. We are asked to direct defendants to cancel the outstanding undercharges. Rates are stated in cents per 100 pounds.

The shipments moved over the Missouri, Kansas & Texas, 343 miles. Charges were collected at a rate of 26.5 cents. The rate applicable was 35 cents, the same as that on beef cattle, although from Kansas City to other Oklahoma points the stock-cattle rate was 75 per cent of the beef-cattle rate. The stock-cattle rate contemporaneously in effect over that line from Kansas City through Oklahoma City to Shawnee and other points, and from Kansas

City to Oklahoma City over the St. Louis-San Francisco, the Chicago, Rock Island & Pacific, or the Atchison, Topeka & Santa Fe, was 26.5 cents, or 75 per cent of the stock-cattle rate. This basis was established to Oklahoma City over the Missouri, Kansas & Texas on February 22, 1921.

We find that the rate assailed was unreasonable to the extent that it exceeded 26.5 cents. Defendants should waive collection of the outstanding undercharges. The complaint will be dismissed.

68 I. C. C.

No. 13345.

**IN THE MATTER OF DIVISIONS OF JOINT RATES,
FARES, AND CHARGES ON TRAFFIC INTERCHANGED
BETWEEN THE MISSOURI & NORTH ARKANSAS RAIL-
ROAD COMPANY AND ITS CONNECTIONS.**

Submitted March 3, 1922. Decided March 14, 1922.

Divisions of joint freight rates accorded the Missouri & North Arkansas Railroad Company found to be unjust, unreasonable, and inequitable. Just, reasonable, and equitable divisions prescribed, effective March 1, 1922.

Rhodes E. Cave, Clark & LaRoe, Frederick E. Brown, and H. S. Priest for Missouri & North Arkansas Railroad Company and its receiver.

C. C. Dana for Atchison, Topeka & Santa Fe Railway; *G. H. Muckley* for Kansas City Southern Railway Company; *S. H. Johnson* and *A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company; *C. S. Burg* for receiver of Missouri, Kansas & Texas Railway Company and respondents generally; *H. G. Herbel* and *C. E. Perkins* for Missouri Pacific Railroad Company; *A. Hilton* and *M. G. Roberts* for St. Louis-San Francisco Railway Company; *R. D. Coleman* for St. Louis Southwestern Railway Company; and *D. W. Longstreet* for Yazoo & Mississippi Valley Railroad Company.

Moultrie Hitt, Ben B. Cain, and Edward E. Gann for American Short Line Railroad Association; *G. W. Anderson* for Brotherhood of Railroad Trainmen; *Hugh McIndoe* for Missouri Public Service Commission; and *Joseph T. Robinson* and *John N. Tillman* in the public interest.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.
BY DIVISION 4:

Upon application of the Missouri & North Arkansas Railroad Company we instituted, by our order of December 8, 1921, an investigation into the divisions of joint rates, fares, and charges on traffic interchanged between that company and its connections. The evidence was confined to the divisions of joint freight rates, and this report will be similarly limited.

The Missouri & North Arkansas admits that, judged by mileage haul alone, it has received its full measure of divisions, but contends

that under the standards prescribed by the present law its divisions are unreasonable and unjust because they are insufficient to make possible the payment of operating expenses, taxes, and a fair return on the property held for and used in transportation service, and to accord to the public an important transportation service. It maintains that increases in rates will not of themselves materially alter this situation and that the present divisions of joint freight rates should be increased by 25 per cent.

The Missouri & North Arkansas extends from Joplin, Mo., to Helena, Ark., a distance of 359.37 miles, with branch lines to Eureka Springs and Berryville, Ark., aggregating 5.20 miles, making the total mileage operated 364.57 miles. From Joplin to Neosho, Mo., it operates over the line of the Kansas City Southern under a trackage agreement, and from Wayne to Seligman, Mo., over the line of the St. Louis-San Francisco under a similar agreement. Connections are made with the following lines at the points named: Atchison, Topeka & Santa Fe at Joplin; Chicago, Rock Island & Pacific at Cotton Plant and Wheatley, Ark.; Kansas City Southern at Joplin and Neosho; Missouri, Kansas & Texas at Joplin; Missouri Pacific at Joplin, Kensett, Mo., Lexa, Ark., and Helena; St. Louis-San Francisco at Joplin, Neosho, Seligman, and Wayne; St. Louis Southwestern Railway at Fargo, Ark.; and Yazoo & Mississippi Valley at Helena.

The investment in road and equipment, as of December 31, 1920, is reported as \$18,160,186.77.

The Missouri & North Arkansas Railroad Company was organized in 1906 to take over and extend the line of the bankrupt St. Louis & North Arkansas Railroad Company. Its operations were never profitable, and in 1912 the company went into the hands of a receiver and the line was so operated until January 1, 1918, when control and operation were assumed by the Director General of Railroads. The following June the property was turned back to the receiver, who suspended operation. In September the Director General offered to resume control and operation of the property with payment of an annual rental more than sufficient to pay interest on outstanding receiver's certificates, and the offer was accepted.

For the last four months of 1920, the carrier's annual report shows a net revenue from railway operations of \$122,371.84. During these four months the increased rates authorized by us on July 29, 1920, were applied and the wage scales as increased during federal control and thereafter by the Railroad Labor Board were in effect. In February, 1921, the receiver was authorized by the United States Court for the Eastern District of Arkansas to reduce the wage scales. In an application for an order to cease operation of the road on July 31,

1921, the receiver represented that since July 1, 1918, the property had shown a net operating deficit averaging approximately \$90,000 per month, and that the operating deficits for April, May, and June, 1921, were, respectively, \$95,000, \$90,000, and \$74,000. By order of the court operation was suspended and has not since been resumed.

It appears from the record that the relatively favorable showing for the last four months of 1920, above referred to, was in part fictitious, because of overestimates of revenues and rigorous reduction in maintenance.

As the result of an informal conference with us a committee of the traffic managers of connecting lines was appointed to study the traffic situation of the Missouri & North Arkansas with a view to determining the increased revenues necessary to insure its operation. This committee based its investigation upon the tonnage handled in 1917, the last year of normal operation, applying to this tonnage the rates and costs in effect in November, 1920, including \$210,000 interest and taxes estimated at \$46,800. A deficit of \$515,844 was shown.

Three plans for securing revenue to meet the deficit were considered by this committee: (1) Diversion of tonnage from other roads to the Missouri & North Arkansas; (2) increased divisions of rates on interline freight traffic; and (3) increased freight rates. The first plan was discarded by reason of the alleged fact that the amount of available traffic unrouted by shippers is too small to affect the situation materially. The second plan was modified by substituting 25 per cent decrease in wages, amounting to approximately \$310,000 per annum. Increased divisions were not recommended. The third plan was favored by the committee, and it was claimed that yearly earnings might be increased approximately \$208,673 by increasing through rates on certain commodities, as follows, the entire increase in each instance to accrue to the Missouri & North Arkansas:

Grain and grain products.....	5 cents per 100 pounds.
Coal.....	\$1 per net ton.
Petroleum products.....	5 cents per 100 pounds.
Cement.....	5 cents per 100 pounds.
Brick.....	5 cents per 100 pounds.
Fertilizer.....	5 cents per 100 pounds.
Ties.....	3 cents per 100 pounds.
Salt.....	25 per cent.
Packing-house products.....	25 per cent.
Merchandise.....	25 per cent.

It was further suggested that if the Missouri Pacific were permitted to increase rates on lumber 3 cents per 100 pounds, from points on its White River division, a corresponding increase from points on the Missouri & North Arkansas would be possible and would yield additional revenue of approximately \$24,000 per year.

On October 10, 1921, the receiver petitioned the Railroad Labor Board for a 25 per cent reduction in the wage scales in effect at the time of suspension of operation, and on February 18, 1922, that board granted the petition on the condition agreed to by the applicant that the owners of the property shall not receive any return upon their investment until the wages of the employees are restored to the standard scale. It is estimated by the receiver that this reduction will result in a saving of \$310,000 per year in operating expenses.

On January 3, 1922, we issued fourth section order No. 8128, authorizing the Missouri & North Arkansas to meet the rates of its competitors to and from common points on its line and to maintain higher rates at intermediate stations; and on January 16 we issued special permission No. 56751 authorizing the increase of freight rates, substantially as recommended by the committee, upon five days' notice.

The question of divisions of rates on interchanged interstate freight traffic remains to be considered in this proceeding. Before a change in these divisions can be required, it must be shown that existing divisions are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers participating in the joint rates, and we must prescribe just, reasonable, and equitable divisions to be received by the several carriers, determined according to the standards provided by law.

OUR DUTIES AND POWERS UNDER THE STATUTE.

Prior to the enactment of the transportation act, 1920, we had authority under certain circumstances to prescribe divisions. That act enlarged our powers in the matter of rates, and our authority over divisions was amplified and made more specific. Paragraph (6) of section 15 of the interstate commerce act, provides that:

In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

It thus appears that specific authority and direction are given us to consider, among other things, the "importance to the public of the transportation service" of the carriers concerned. In dis-

discussing paragraph (6) in *Pittsburgh & W. Va. Ry. Co. v. P. & L. E. R. R. Co.*, 61 I. C. C., 272, we said:

As we view this provision, it recognizes clearly that divisions are affected with a public interest and are not a mere matter of bargain and trade between carriers. * * * It follows that defendants have a strategic advantage if divisions were to be fixed by the ordinary process of bargaining. But one of the duties of a common carrier is to participate in such joint rates as the public interest requires. This is an incident of their public undertaking, and equity does not necessarily demand that they be compensated by larger divisions in the instances where it might be more advantageous to confine traffic to their own lines. * * * It is an intent clearly disclosed that we shall keep continually in view the public interest, the public need for a transportation system strong in all its parts, and the consequent necessity that carriers shall receive compensation fairly proportioned to the amount and character of the service which they perform and adequate to enable them to perform it efficiently.

These views have recently been reiterated and emphasized in *New England Divisions*, 66 I. C. C., 196, wherein we said, at page 199:

It is impossible to avoid the conclusion that Congress intended the relative financial needs of carriers, so far as these needs are legitimate and incident to the transportation service, to be given consideration in fixing divisions; and it is just and right that this should be so. The cost of the service includes not only expenses of operation but taxes and the proper capital charges incident to the continued functioning of the property. We recognize this when we make allowance for density of traffic in the determination of reasonable rates. The share of overhead costs fairly attributable to interchange traffic may likewise be greater, relatively, where this density is low. Moreover, the group plan of increasing rates which we followed in 1920 under the provisions of the new law necessarily results in inequality of return to the various carriers. Certain of them gain a larger reward than they would receive if it were practicable to fix rates for individual companies, while others have less. Yet all are parts of the national transportation system and must be adequately maintained if they are not to be abandoned. Due regard for the public interest demands that we give these fortuitous inequalities consideration in the fixing of divisions.

Summing up this phase of the matter, we are of the opinion that our power over divisions is founded upon the public interest; that the carriers are mutually dependent parts of the transportation system; that the public interest requires that all essential parts be maintained, so far as possible, in effective working condition; that the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and that included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier.

The purpose of the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220, was to permit a return of 6 per cent on the value of carrier property as a whole, within the boundaries of each rate-making group under normal traffic conditions. From the evidence submitted it appears that the Missouri & North Arkansas would not,

if operated, derive a share of the revenue thus produced within the group in which it is included fairly proportioned to the amount and character of the service which it performed.

IMPORTANCE TO THE PUBLIC OF THE TRANSPORTATION SERVICE.

The Missouri & North Arkansas lines extend through 3 counties in Missouri and 12 counties in Arkansas, besides drawing traffic from 1 additional Missouri county and 10 additional Arkansas counties. The total area tributary to the line and depending principally upon it for service is estimated at 5,394 square miles, with a population variously estimated from 126,648 to 145,295. These figures do not include the portions of the line operated under trackage rights. The value of the farm property in this tributary territory is estimated at \$76,728,000. That portion of the line extending from Seligman, Mo., to Searcy, Ark., a distance of approximately 221 miles, operates through territory practically without other rail transportation. The White River division of the Missouri Pacific parallels the Missouri & North Arkansas on the east at distances ranging from 7.5 to 19 miles via air line, but the intervening country is mountainous, the roads are practically impassable during a considerable portion of the year, and in many instances the distance by road is at least double the air-line distance. The White River flows between the two railroads; there are few if any bridges, and but few ferries.

During the period 1916 to 1920, inclusive, traffic was handled by the Missouri & North Arkansas as follows:

Year.	Revenue freight originating on road.	Revenue freight from connecting carriers.	Total revenue freight carried.
	Tons.	Tons.	Tons.
1916.....	365,553	166,323	531,876
1917.....	399,120	189,361	588,481
1918.....	123,451	35,924	¹ 159,375
1919.....	345,644	157,780	503,424
1920.....	431,006	257,003	688,009

¹ Operations suspended during portion of year.

The territory adjacent to the northern end of the line in Arkansas is mountainous and wooded, and it is stated that as the land is cleared it is being developed for farming and stock and fruit raising, particular attention being devoted to cultivation of apples, peaches, and strawberries. The southern end of the line extends through what is designated as the "low country," producing in addition to the usual farm crops considerable tonnage of rice and cotton. It is

alleged that there are now accumulated along the line about 3,000 carloads of ties, and other forest products, awaiting shipment which are deteriorating, and will eventually be a total loss unless the railroad resumes operation. There is no appreciable amount of manufacturing along the line. At Leslie, Ark., there are three stave mills with an aggregate investment said to be approximately \$1,250,000. There are also a few flour mills and tomato-canning plants at various points.

Suggestion has been made by certain of the connecting carriers that a portion of the Missouri & North Arkansas at the southern end be discontinued. In the light of the evidence submitted we believe that this railroad is a public necessity in its entirety, and that operation thereof should be resumed and continued.

REVENUE REQUIRED TO PAY OPERATING EXPENSES, TAXES, AND A FAIR RETURN ON THE CARRIER PROPERTY.

No allegation of inefficient operation appears in the record against the Missouri & North Arkansas or any of the respondent connecting lines. We have received numerous informal communications, some of which raise this issue, but no evidence upon the subject was offered.

In our consideration of this case, we have assumed that the indicated saving of \$310,000 per year will be effected by the authorized reduction in wages, and our conclusions are based on that assumption.

The law in its present form requires that we give due consideration, among other things, to the revenue needs of carriers participating in joint rates to enable them to pay operating expenses, taxes, and a fair return on the value of their carrier property used in the transportation service as well as to all other facts or circumstances which, without regard to the mileage haul, entitle one carrier to a greater or less proportion of a joint rate than is received by others.

In comparing the revenue needs of the Missouri & North Arkansas and its connections we have made use of various units derived in a uniform manner. For example, to secure unit comparisons embracing all revenues and all expenses we have adopted for use in some comparisons the "equated ton-mile," derived by adding to the freight ton-miles three times the passenger-miles, the ratio between freight revenues per ton-mile and passenger revenues per passenger-mile in that territory being approximately as 1 to 3. We have also aggregated all transportation service car-miles. It is, of course, understood that the reduction of gross earnings or expenses to units of this character does not produce absolutely correct results, but where the same method is used in all cases, the results afford a reasonable basis for comparison.

Comparison of unit revenues, expenses, and return for year ended December 31, 1920.

	Missouri & North Arkansas.	Atchison, Topeka & Santa Fe.	Chicago, Rock Island & Pacific.	Illinois Central and Yazoo & Mississippi Valley.	Kansas City Southern.	Missouri, Kansas & Texas.	Missouri Pacific.	St. Louis-San Francisco.	St. Louis-Southwestern.
.....cents.	1.388 25.92 313	1.35 22.516 529	1.216 21.906 412	0.9 17.175 431	1.064 22.02 570	1.355 21.55 536	1.104 22.15 453	1.358 26.938 459	1.217 23.471 631
.....cents.	1.715 38.8 337	1.118 18.648 433	1.15 20.786 390	.877 16.726 419	.89 18.063 463	1.201 19.094 475	1.103 21.149 447	1.207 23.906 403	.896 15.426 423
Net revenue:									
Per equated ton-mile.....cents.	4.127 d 2.879 d 25	.232 3.808 91	.005 1.18 22	.023 .447 11	1.94 3.937 102	.154 2.456 61	.032 1.001 21	.131 2.062 31	.451 8.065 223
Per car-mile.....cents.	4.127 d 2.879 d 25	.17 2.844 67	4.011 d 1.19/ d 3.699	4.011 d 1.1/ d 5	.12 2.452 63	.177 2.307 70	4.044 d 1.15/ d 18	.078 1.553 26	.403 7.153 199
Per railway operating income.....cents.									
Per equated ton-mile.....cents.	117.64 d 8.45 d 12.80	303.55 62.15 38.34	361.53 20.40 d 2.42	610.91 158.87 d 74.55	287.50 62.46 28.34	222.46 25.35 28.98	320.75 14.61 d 12.87	264.43 28.24 14.63	369.23 99.13 53.52
Per car-mile.....cents.	11.764 d 8.45 d 1.330	30.355 5.215 2.834	38.158 2.049 .842	61.091 15.891 d 7.455	28.750 4.246 2.634	23.246 2.535 2.896	32.075 1.451 d 1.557	26.443 2.524 1.468	28.023 9.913 5.853
Net revenue.....per cent.									
Railway operating income.....per cent.									

The preceding statement shows unit comparisons of the Missouri & North Arkansas and its connections for 1920.

While the revenue of the Missouri & North Arkansas per equated ton-mile is greater than that of any of its connections, and its earnings per car-mile are also substantially greater, the earnings per train-mile are materially less, thus evidencing a small trainload, the usual incident of a light traffic. The contrast in the case of operating expenses per equated ton-mile and per car-mile is even greater, but expenses per train-mile are somewhat less than those of the connections. The general result is that while the Missouri & North Arkansas sustained a deficit of 35 cents per train-mile, five of its connections show incomes ranging from \$1.99 per train-mile in the case of the St. Louis Southwestern to 26 cents per train-mile in the case of the St. Louis-San Francisco. Three of the connections show deficits, the greatest being 18 cents per train-mile in the case of the Missouri Pacific. Comparisons for other years show similar results.

In other calculations we have considered separately the results for the freight traffic and for the passenger-train traffic based upon the distribution of operating expenses between the two classes in accordance with our plan and including that revenue only which is embraced in accounts Nos. 101 to 110, inclusive. The operating ratios of the carriers concerned in respect of all revenue afford a basis for the determination of the effect of incidental revenues which are not embraced within accounts Nos. 101 to 110, inclusive. The freight operating ratio is larger than the passenger operating ratio, except in the cases of the St. Louis Southwestern, for which the freight ratio is considerably the lower, and the Yazoo & Mississippi Valley, for which the two ratios are substantially equal. It also appears that the freight ratio of the Missouri & North Arkansas (1.2059) is approximately 126 per cent of the average freight ratio of the other lines (0.9577), and that the passenger ratio of the Missouri & North Arkansas (0.9078) is approximately 112 per cent of the average passenger ratio of its connections (0.8078). The disparity in the case of freight service, 26 per cent, is more than twice the disparity in the case of the passenger service. The indications are that the passenger fares and divisions accorded the Missouri & North Arkansas are sufficient to meet the operating expenses properly attributable to the passenger service, but that the freight rates and divisions thereof accorded this carrier are not sufficient to meet even the maintenance, traffic, transportation, and supervisory or general expenses properly to be charged against the freight traffic, to say nothing of taxes, net rental charges, or fair return on property used in the service.

It may be argued that, on the basis of the freight operating costs thus shown, the application of the Missouri & North Arkansas for a

25 per cent increase in its divisions on freight interchanged with its immediate connections is justified, inasmuch as it appears:

1. That, on this account, out of every dollar of its freight revenue the former must take on the average 25 cents more than the latter;

2. That the revenue of the former is insufficient to the extent of 21 cents on the dollar earned to meet operating expenses alone, while the revenue of the latter is sufficient to meet operating expenses and provide in addition 4 cents on the dollar earned for taxes and return on investment;

3. That an addition to the former's revenue of 25 cents on the dollar earned would put it upon an equality with its connections in this respect.

This argument ignores the fact that the connecting lines can not shrink their revenues to bring the Missouri & North Arkansas up to their present situation and at the same time have the amounts of the shrinkage for the purposes to which they may now be applied. The necessities of the connections, as well as those of the Missouri & North Arkansas, must be considered.

The following excerpt is taken from a statement by the Kansas City Southern in respect of its interchange with the Missouri & North Arkansas:

Operating ratio (K. C. S.) for 1921, 11 months to December 1st, 1921, 77.78 per cent.

Cost of handling traffic based on operating ratio—not including interest and return on investment, hire of equipment, joint facility rents, and miscellaneous income charges—77.78% of \$169,840.56=\$132,101.99.

Total revenue acquired on traffic interchanged with M. & N. A. by

K. C. S. Ry-----	\$169, 840. 56
Amount of additional revenue sought by M. & N. A. from K. C. S.--	48, 801. 90
Operating revenue after deducting additional revenue sought by	
M. & N. A.-----	\$121, 038. 66
Operating cost based on operating ratio-----	\$132, 101. 99
Operating revenue after deducting additional revenue sought by	
M. & N. A.-----	\$121, 038. 66
Estimated out of pocket cost in handling traffic interchanged with	
M. & N. A. if increased divisions, as sought, are allowed-----	\$11, 063. 33

This statement involves the idea that the operating ratio of a relatively small fragment of the carrier's total business must necessarily be the same as that of the whole. If we should assume that the divisions out of which arise the revenues of \$169,840.56 are four times as high as they ought to be, the conclusions reached by this process of reasoning would, nevertheless, be the same. Operating ratios are of value as showing trends in comparisons between carriers, but their use to show an alleged out-of-pocket cost, as is attempted in the Kansas City Southern statement, can not be sustained. Such reasoning as this would prevent the reduction of any

rate or division, no matter how extortionate or unreasonable, below that percentage of itself which is represented by the average operating ratio of the carrier involved.

We are convinced that in the case of no carrier do the reductions in divisions proposed by the Missouri & North Arkansas, or those which we shall approve, reduce the revenue on the traffic involved to anything like the out-of-pocket cost. On the contrary, we believe that the resumption of traffic by the Missouri & North Arkansas with the divisions which we shall prescribe will result in a considerable increase in net railway operating income, not only for the entire group, but also for each carrier concerned in this case. The estimated reduction in the revenues of the Kansas City Southern resulting from the divisions which we shall prescribe, applied to the revenues used in its statement, is not more than \$32,000, and the deduction of this amount from the total operating revenue of the company will not substantially, for the purposes of this case, increase its operating ratio.

The use of operating ratios derived from all traffic for adjustment of a part of the traffic without consideration of that part of the business to which the adjustment is not to be applied thus leads to erroneous conclusions. For example, the freight-service revenues and passenger-service train revenues, considered alone, for the Missouri & North Arkansas and for its connections, respectively, were for the year 1920:

Missouri & North Arkansas:

Freight-service revenues	\$1,332,021
Passenger-service train revenues	772,589
Total	2,104,610

Connecting trunk lines:

Freight-service revenues	576,529,629
Passenger-service train revenues	232,094,639
Total	808,624,268

Of the freight-service revenues of the Missouri & North Arkansas it is estimated that 25 per cent comes from local traffic, which is not here in issue, leaving a revenue of substantially \$1,000,000 derived from divisions. This amount is subject to reduction because of intermediate or other traffic included therein to which, on account of competitive or other reasons, the adjustments can not be applied. Moreover, it is derived in part from divisions of intrastate rates, but for comparative purposes the amount may be considered as a whole. Bearing in mind the principle that what is added to the Missouri & North Arkansas must be deducted from the connections, we have, in the following table, an exemplification of an average adjustment of divisions on interline freight traffic based on equal-

ization of operation expense burdens per unit of revenue, or of operating ratios for all traffic, omitting incidental revenues from consideration:

	Missouri & North Arkansas.		Connections.		Total.	
	Amounts.	Ratios.	Amounts.	Ratios.	Amounts.	Ratios.
Total freight and passenger revenues (omitting incidental revenues).....	\$2, 104, 610	<i>Per cent.</i>	\$808, 624, 268	<i>Per cent.</i>	\$810, 728, 878	<i>Per cent.</i>
Total expenses.....	2, 307, 604	.....	739, 638, 307	.....	741, 945, 911	.....
Operating ratio.....		109. 65		91. 47		91. 51591
Equalized revenues.....	2, 521, 533	.....	808, 207, 345	.....	810, 728, 878	.....
Equalized operating ratio.....		91. 52		91. 52		91. 52
Increase in M. & N. A. revenues necessary to equalize.....	416, 923	.....			
Decrease in connecting-line revenues necessary to equalize.....			416, 923			
Percentage ratio of M. & N. A. increase to all its revenues.....		19. 81				
Percentage ratio of M. & N. A. increase to revenue (\$1,000,000) subject to increase.....		41. 69				

For a Missouri & North Arkansas interline freight revenue of \$1,000,000 subject to change there would be under present divisions a connecting-line revenue of approximately \$1,300,000, and of this revenue the required reduction would be 32.071 per cent.

But, as we have stated, the adjustment can not properly be effected solely upon a consideration of the results for the Missouri & North Arkansas as compared with all of the trunk-line connections taken as a group. The spread between the freight operating ratio of the St. Louis Southwestern, 61.77 per cent, and that of the Missouri, Kansas & Texas, 91.94 per cent, for example, is practically equal to the difference between the latter and that of the Missouri & North Arkansas, 120.59 per cent. We must consider the respective needs of all of the carriers involved in this proceeding, and we can not determine the case by weighing the operating ratios alone. The law requires that other elements be taken into account.

For the purpose of showing the revenues accruing to the Missouri & North Arkansas, and each of its immediate connections, from the joint freight traffic with which we are here particularly concerned, as compared with the service rendered and the costs and burdens incurred in earning these revenues, we have prepared the tabulation shown in Appendix No. 1. The figures for item 1, revenues under present divisions, are drawn from statements of the carriers, compiled by adding to the actual proportions of revenue for 1917 increases representing the advances in rates up to and including 1921. The actual proportions for 1920 are not available. The average cost per ton-mile is that of 1920. Because of the assumptions involved in the use of certain averages the results derived and set forth in items 5, 8,

and 12, respectively, can not be accepted as absolute. They nevertheless have great significance for comparative purposes and clearly illustrate, in view of the considerations for determining divisions set forth in paragraph (6) of section 15 of the interstate commerce act, the fallacy of the respondent trunk lines in pitching their defense of the present divisions almost wholly, if not entirely, upon a comparison of the divisions of revenue with service performed as measured by the mileage haul. An inspection of Appendix No. 1 will show that while the average percentage of revenue received by the connecting line is in every case less than the percentage of total service performed by that connecting line when that service is measured by revenue ton-miles of freight, the average percentage of revenue received by the connection is in every case greater than the percentage of service performed, when service is measured either by the cost of performing the service or by the burden necessary to provide for cost and return on investment.

OTHER ELEMENTS.

The Missouri & North Arkansas is essentially an originating and delivering line. For 1917, its last year of normal operations, approximately 56 per cent of the traffic handled originated on the line and 39 per cent was delivered on the line. Much evidence was introduced by the connecting lines showing the volume of traffic interchanged with the Missouri & North Arkansas, and, in separate instances, the divisions allowed, length of hauls, mileage prorates, etc. It was admitted in each instance that the divisions were made upon the basis generally observed prior to the enactment of paragraph (6) of section 15 of the interstate commerce act; and that such questions as efficiency of operation, amount of revenue required to pay operating expenses, taxes, and a fair return, and the importance of the service to the public, were not considered.

In 1917, 588,481 tons of revenue freight were handled by the Missouri & North Arkansas of which approximately 25 per cent, or 147,120 tons, was local freight moving between stations on the line. The following table shows the distribution of the 1917 tonnage, the resulting revenue to each of the interested carriers on basis of the 1921 rates, and the effect on each carrier of the proposed 25 per cent increase. Exact figures in conformity with those for other lines were not submitted for the Rock Island, it being stated that its situation was substantially similar to that of the St. Louis Southwestern. No complete tonnage figures were submitted for the St. Louis-San Francisco, and the figure shown is arrived at by deducting 25 per cent of the total tonnage handled, representing local

traffic, and then deducting from the remainder the sum of the tonnage handled by all other connections.

Connecting line.	Revenue freight.	Revenue on 1917 tonnage equated to 1921 rates.		Same basis with 25 per cent increase to M. & N. A.		Total increase to M. & N. A.
		Connecting line.	M. & N. A.	Connecting line.	M. & N. A.	
	<i>Tons.</i>					
Atchison, Topeka & Santa Fe.	33,335	\$219,198.39	\$109,896.11	\$191,724.36	\$137,370.14	\$27,474.08
Yazoo & Mississippi Valley....	60,885	271,059.07	110,487.97	243,437.08	138,109.96	27,621.99
Missouri, Kansas & Texas.....	39,264	126,433.16	113,321.52	98,103.83	141,651.45	28,329.93
St. Louis Southwestern.....	33,718	62,895.20	46,202.82	51,344.50	57,753.52	11,516.73
St. Louis-San Francisco ¹	124,272	254,334.30	274,111.11	185,806.85	342,638.56	68,527.45
Kansas City Southern.....	58,142	136,185.06	195,207.63	87,383.16	244,009.53	48,801.90
Missouri Pacific.....	58,027	190,632.33	164,915.65	149,403.44	206,144.57	41,228.92
Chicago, Rock Island & Pacific ²	33,718	62,895.20	46,202.82	51,344.50	57,753.52	11,516.73
Total.....	441,361	1,323,632.71	1,060,345.63	1,058,547.72	1,325,431.25	265,017.68

¹ Tonnage figures approximate.

² All figures approximate.

Among the facts and circumstances which would ordinarily entitle one carrier to a greater or less proportion than another carrier of a joint rate, fare, or charge, one of the most important is the average length of haul. The effect of relative lengths of haul on relative costs of transportation has long been recognized. *Shepard v. Northern Pac. Ry. Co.*, 184 Fed., 765, *Board of Trade of Troy, Ala., v. Ala. Mid. Ry. Co.*, 6 I. C. C., 1, 23, and *Northern Pac. Ry. Co. v. Keyes*, 91 Fed., 47.

Density of traffic, grades, alignment, and other physical characteristics of the road are circumstances which ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another of the joint rate, and have been given appropriate consideration herein.

POSITION OF CONNECTING LINES.

Nearly all of the connecting lines stress their expense of maintaining terminals and absorbing switching charges as compared with that of the Missouri & North Arkansas. As we have seen, however, for 1917 approximately 95 per cent of the traffic of the Missouri & North Arkansas either originated at or was destined to stations on its line, involving at least one terminal service.

The Kansas City Southern submitted evidence showing the annual revenue accruing to it by interchange of traffic with the Missouri & North Arkansas as \$169,840.56, the basis employed being the business for the six months ending February, 1921, inclusive. The operating ratio of that carrier for the 11 months ended November 30, 1921, was 77.78 per cent, and on this basis the cost of handling the traffic would be \$132,101.99, leaving a net revenue of \$37,738.57. If required to add \$48,801.90 to the divisions of the

Missouri & North Arkansas it is alleged that a loss of approximately \$11,100 would be sustained. We have discussed the fallacy of this contention.

The Atchison, Topeka & Santa Fe Railway and the Missouri, Kansas & Texas Railway base their objections to increased divisions for the Missouri & North Arkansas on substantially the same grounds as are alleged by the Kansas City Southern.

CONCLUSIONS.

Notwithstanding the fact that the record raises a strong presumption that most of the respondent connecting lines are not now earning a return upon the value of their property as great as was contemplated by section 15a of the act, we believe that we are not precluded from making such adjustment of divisions in question as we find just and reasonable. It is necessary that all essential transportation facilities of the country be kept in operation. It is clear that in order to resume and continue operation the Missouri & North Arkansas must have additional revenues, and irrespective of this need it is entitled to divisions which are just, reasonable, and equitable under the standards prescribed in paragraph (6) of section 15 of the interstate commerce act. Such relief as was deemed practicable through increases in rates has been afforded, and further relief has been realized through action of the Railroad Labor Board. These measures alone will not suffice. We are convinced that, having a fair regard for the necessities of all the carriers and considering all proper circumstances of the traffic, the divisions of interstate joint rates now accorded the Missouri & North Arkansas by its connections are unjust, unreasonable, and inequitable under the standards prescribed by law. It is not practicable for us to prescribe proper specific divisions for each of the multitudinous rates involved. We can, however, deal separately with the interstate joint rates participated in by the Missouri & North Arkansas and each of its immediate connections, and the evidence is ample to justify a general finding in each such case. In reaching our decision we have taken into consideration the relation between the earnings realized by the carriers and the earnings contemplated by section 15a. We have considered the value of the property of each carrier used by it in transportation service, attaching such importance as we deemed proper to such elements of value as were available and are recognized by the law of the land for rate-making purposes.

Upon the facts of record, we find that the divisions of interstate joint freight rates on traffic interchanged between the Missouri & North Arkansas and its immediate connections are unjust, unreason-

able, and inequitable, and that for the future in respect of traffic originating or terminating on the Missouri & North Arkansas just, reasonable, and equitable divisions of such joint rates accruing to each of the connecting lines should, on the average, not exceed the following percentages of such divisions as would have been received by such carriers under the divisional arrangements in effect on January 1, 1922:

Atchison, Topeka & Santa Fe.....	80 per cent.
Rock Island.....	85 per cent.
Yazoo & Mississippi Valley (including Illinois Central).....	90 per cent.
Kansas City Southern.....	80 per cent.
Missouri, Kansas & Texas.....	80 per cent.
Missouri Pacific.....	90 per cent.
St. Louis-San Francisco.....	80 per cent.
St. Louis Southwestern	75 per cent.

There are prescribed herein as the just, reasonable, and equitable divisions to be observed on and after March 1, 1922, divisions constructed substantially according to the following rules:

Considering separately the several divisions of interstate rates on freight interchanged in the year 1917 between the Missouri & North Arkansas and its connections and having origin or destination on the Missouri & North Arkansas, at rates applicable January 1, 1922, there shall be deducted from the revenue or proportion accruing under present divisions to said connections, whether determined upon arbitraries or percentages or in any other manner, the percentages hereinafter indicated of the totals of such revenue or proportions creditable to freight revenue, account No. 101, of such connections respectively; and the amounts so deducted from the revenues or proportions of its connections shall be added to the revenue or proportions of the Missouri & North Arkansas, to wit:

Atchison, Topeka & Santa Fe.....	20 per cent.
Rock Island.....	15 per cent.
Kansas City Southern.....	20 per cent.
Missouri, Kansas & Texas.....	20 per cent.
Missouri Pacific	10 per cent.
St. Louis Southwestern.....	25 per cent.
St. Louis-San Francisco.....	20 per cent.
Yazoo & Mississippi Valley (including Illinois Central).....	10 per cent.

Joint rates applicable to traffic in which the Missouri & North Arkansas is an intermediate carrier will not be affected by our order. Where interstate rates are increased pursuant to authority of our fourth section order No. 8128, issued January 3, 1922, and under our special permission No. 56751, dated January 16, already

mentioned in this report, the entire increase in the rates in addition to the adjustments above stated will be added to the proportion of the Missouri & North Arkansas.

When the amounts of revenues accruing to the Missouri & North Arkansas and to its several connections out of the respective rates are thus determined, these revenues will in total be respectively represented so far as practicable by two-figure percentages; that is, expressed in respect of the proportion accruing to any line in full hundredth parts of the total to be divided and applied for the future so far as practicable to the total revenue accruing from freight rates between stations or groups of stations on the Missouri & North Arkansas and its connections.

In cases where because of inconsistencies in present divisions, because the increased divisions accruing to the Missouri & North Arkansas may exceed local rates, or for other reasons, the divisions resulting from the above rules may in special instances be found to be inequitable, inconsistent, or otherwise unreasonable, the parties will be expected to make such adjustments as will effect substantially the general results prescribed and to report their action to us. Carriers for which rates of reduction of divisions are prescribed lower than are prescribed for their competitors on competitive business to or from the Missouri & North Arkansas may voluntarily meet the greater reduction in divisions prescribed for their competitors. If it shall be found that in special instances the divisions herein prescribed operate unjustly, inequitably, or otherwise unreasonably to the injury of any carrier participating in a joint rate with the Missouri & North Arkansas, such situations may be called to our attention by appropriate proceedings and we will afford such relief as we may find warranted.

The Missouri & North Arkansas and each of its connections respectively shall jointly report to us on or before May 15, 1922, the divisions established according to the foregoing rules, together with the number of tons, the number of ton-miles, and revenue for each of the carriers between each of the stations or groups of stations for which the divisions are determined, and shall thereafter jointly report the results of the application of these divisions to business actually interchanged in the year 1922, to June 30, and from July 1 to December 31, 1922, inclusive, with a similar showing of tons and of ton-miles and revenue for each carrier between stations or groups of stations as the case may be. The reports for the period ending June 30, 1922, shall be rendered on or before October 1, 1922, and the reports for the six months ending December 31, 1922, shall be rendered on or before April, 1, 1923, and jurisdiction is retained

to adjust on basis of such reports the divisions herein prescribed or stated if such adjustment shall to us seem proper.

Similar reports shall also be made of interchanged interstate traffic as to which the Missouri & North Arkansas is an intermediate carrier. An appropriate order will issue.

DANIELS, *Commissioner*, dissenting:

There is a rapidly growing recognition of the vital importance of the commission's extended powers over divisions of joint through rates. The enlarged powers of the commission in this sphere were apparently devised to rescue from duress weak roads which receive an inadequate share of joint rates from their stronger connections. But whatever the original design, the commission's power is rapidly coming to be regarded as an engine for the equalization of earnings and income. The statute relating to the recapture of excess earnings evidently contemplates that there need be eventually no absolute equalization in return, because the excess over the amount recoverable, when a proper reserve has been accumulated, may be retained by a carrier and used by it for any lawful purpose. To this extent the law still recognizes the desirability of stimulating and rewarding superior ability in furnishing the public with transportation. Neither does the present statute contemplate that every carrier now in existence shall, irrespective of circumstances, be continued in service. Otherwise the provisions for the granting of certificates that the public convenience and necessity permit, with the commission's approval after hearing, the abandonment of all or any portion of a line of railroad or the operation thereof would not be found in the law. From the standpoint of applicant carriers petitions for enlarged divisions are largely actuated by, and even avowedly based upon, their desperate financial needs. The response which such an application evokes may readily, if unconsciously, be influenced by the straits in which we find the petitioning carrier. It is therefore imperative that in passing upon this matter of divisions we shall follow a method of whose legality there can not be serious question.

I find myself not at all disposed to dissent from the pronouncement in *Pittsburgh & W. Va. Ry. Co. v. P. & L. E. R. R. Co.*, 61 I. C. C., 272, where it is said:

divisions are affected with a public interest and are not a mere matter of bargain and trade between carriers. * * * one of the duties of a common carrier is to participate in such joint rates as the public interest requires. This is an incident of their public undertaking, * * *

Nor am I at all disinclined to approve of a new standard for adjudging the equity of divisions of joint through rates. The method which in the past has largely prevailed of dividing such joint earnings in proportion to an approximate estimate of the respective

amount of physical work done by each carrier may prove in many instances to be an indefensible basis of future divisions, considering the matter from the public standpoint. If, for example, two lines interchange traffic, carrying it for an equal distance upon each line and with one terminal service on each line, it may well happen that the legitimate cost on one line is greater than upon the other line. Such greater cost may well be shown to require and justify a greater division than 50 per cent to the carrier incurring the greater cost, provided that the latter carrier is a necessary public servant, is efficiently operated, and is obligated to meet capital charges only fairly commensurate with the value of the property which it uses in the service of the public. In the instant case I am not persuaded that some increases in certain divisions—perhaps in most divisions—of the applicant are not justified, provided they are established along lines conformable to the lawful rights of its connections. Moreover, I agree that the petitioner has become a necessary avenue of transportation and should be continued in operation. But such a conclusion is, in my judgment, no warrant for a blanket finding that all existing divisions are unjust and unreasonable, nor for establishing a new basis of divisions along the lines prescribed in this report, and without fuller and more explicit explanation of the new adjustment required.

But with all these concessions there are certain things in prescribing divisions which we may not lawfully do. First, we may not fix divisions by any rule which requires or purports to require a connecting road or roads to accept remuneration which is not sufficient to cover at least the actual cost of their share of the joint service.

Second, we may not lawfully prescribe changed divisions by a general rule which does not in express terms except from its requirements existing divisions which are now demonstrably just and reasonable.

Third, we may not lawfully prescribe divisions, even though they be just and reasonable, without an adequate disclosure of the basis upon which we have proceeded.

Connecting carriers which are adversely affected are clearly entitled to know exactly what was the basis employed for requiring them to accept a lower compensation for their share of a joint task. I do not assume that in such equalization of divisions there is left no play for the flexible exercise of judgment where matters are incapable of exact mathematical measurement. But, for instance, where a new system of divisions is decreed, upon the ground that the readjusted divisions must, among other things, afford a fair return upon the respective railroad properties held for and used

in the service of transportation, all of the carriers are fairly entitled to know, at least within approximate limits, the basis which the commission adopts in order that a fair return may be made to all of the participants in interline traffic.

Fourth, we may not, in my judgment, lawfully establish divisions which overlook or disregard or brush aside the rights of connecting carriers other than the immediate connections of a petitioner.

Where three roads, A, B, and C, participate in joint through rates it does not suffice, to comply with the law, to make an adjustment as between A and B, in total disregard of the way in which the joint fund is divided between A, B, and C, or the residue of the fund as between B and C.

These general limitations upon our lawful power to prescribe rates have, I believe, been overlooked or minimized, not only in the case at bar, but in other recent instances where our orders purport to establish a new basis for divisions of joint rates.

The general limitations upon our lawful authority to fix divisions of joint rates are transgressed in this particular case as follows: First, the general prescription of divisions requires certain connections of the petitioner to accept reduced revenue that appears to be clearly below their operating expenses, to say nothing of affording no contribution to taxes and interest charges. From Exhibit 44, Sheet 4, the following appears, covering movement in November, 1920, as between the petitioner and the Kansas City Southern:

Commodity.	Distance on Kan. Cy. So.	Car-mile revenue to Kan. Cy. So.	Car-mile revenue 80 per cent.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Ties.....	155	40 to 53	32 to 42
Lumber.....	155	36 to 37	29 to 30
Canned goods.....	155	52 to 57	42 to 46
Cattle.....	174	17 to 28	14 to 22
Hogs.....	174	15 to 29	12 to 24
Sheep.....	174	19	15

The average car-mile revenue (loaded movement) on the Kansas City Southern in 1920 was 25.633 cents. The operating ratio on all business was 82.24 and on freight was 84.18. The operating expense per loaded car-mile may therefore be taken at 21.577 cents for the year 1920. The average haul on this road was 277 miles. From the above it appears that on hogs, for example, where the haul averaged 174 miles, or less than the average haul, the return as reduced under the proposed report ranges from 12 to 24 cents per car-mile. Clearly the lower division is noncompensatory, and its enforcement confiscatory.

Second, the rule prescribed for divisions in the report requires a readjustment of certain existing divisions, which on any basis of cost per unit to the participants can be shown to be now entirely just to the petitioner. Exhibit 106 gives an example of 54 cars of coal interchanged with the St. Louis-San Francisco. The haul on the Missouri & North Arkansas is 60 miles; on its connection, 63 miles. The actual division of revenue was

To the Missouri & North Arkansas.....	\$4,332.75
To the St. Louis-San Francisco.....	2,652.30

Under the rule prescribed in the report the divisions will be changed so as to accord

To the Missouri & North Arkansas.....	\$4,863.21
To the St. Louis-San Francisco.....	2,121.84

There are no facts or figures cited in the report showing the cost per unit of service on the petitioner to be twice as great as on its connections.

Third, the rule established in the report prescribes divisions without an adequate disclosure of the method or the figures which we adopt upon which allowance is made for "proper capital charges incident to the continued functioning of the property" of the petitioner and its connections. Manifestly we ought not to accept the unanalyzed book cost of road and equipment. If other figures are taken, they ought to be stated. We may not fairly require the petitioner's connections to relinquish earnings which they would receive under existing contracts for divisions unless we disclose to them what are the figures upon which we reckon a fair return to them, one and all. Due process of law is incompatible with withholding the basis upon which property is taken away from one and bestowed upon another.

Force is given to this latter consideration when it is observed that a finding, even in round numbers, of the approximate fair values of their respective properties would disclose whether we make allowance for the relative judgment and foresight with which these systems were respectively projected and built. That such an allowance ought in justice to be made and to be stated in the report seems to me self-evident.

There has been suggested a method whereby we might escape various valid objections to the one employed in this report. If we found the fair bases on which a certain yield, let us say 6 per cent, was to be made to each participating carrier, we could calculate the average loaded freight-car revenue, or ton-mile revenue, required by each of the participants to yield the stated rate of return. A hypothetical rate could then be constructed by applying the car-mile revenue or ton-mile revenue of each carrier to the mileage it

performs in each instance, making an allowance, let us say, of 50 miles additional, for each terminal service. The per cent derived from this hypothetical rate could then be applied to the actual joint rate. Such a first rough approximation is illustrated in the following table:

Road.	Assumed valuation.	Loaded freight car-mile revenue needed 1917.	Road.	Assumed valuation.	Loaded freight car-mile revenue needed 1917.
Kansas City Southern.....	\$51,262,747	Cents. 15.06	Chicago, Rock Island & Pacific.....	\$329,907,243	Cents. 16.64
Chicago, Burlington & Quincy.....	473,342,000	14.28	St. Louis-San Francisco...	347,633,136	24.00
Union Pacific.....	313,310,919	14.04	Missouri & North Arkansas	9,000,000	31.52

There is one last criticism to be made of the report. It is subject to all the infirmities alleged against it in the preceding paragraphs; or else it is infected with uncertainty and similarly infects with uncertainty the order appended. It reads—

Upon the facts of record, we find that the divisions of interstate joint freight rates on traffic interchanged between the Missouri & North Arkansas and its immediate connections are unjust, unreasonable, and inequitable, and that for the future in respect of traffic originating or terminating on the Missouri & North Arkansas just, reasonable, and equitable divisions of such joint rates accruing to each of the connecting lines should, on the average, not exceed the following percentages of such divisions as would have been received by such carriers under the divisional arrangements in effect on January 1, 1922.

Does the statement “we find the divisions * * * unjust, unreasonable, and inequitable, etc.,” mean *all* divisions or only *some* divisions? It would seem to mean all divisions; but later the report says—

In cases where because of inconsistencies in present divisions, because the increased divisions accruing to the Missouri & North Arkansas may exceed local rates, or for other reasons, the divisions resulting from the above rules may in special instances be found to be inequitable, inconsistent, or otherwise unreasonable, the parties will be expected to make such adjustments as will effect substantially the general results prescribed and to report their action to us.

The report is incorporated by reference in the order and made part thereof. Such inclusion either leaves open to dispute whether particular existing divisions display “inconsistencies,” or for other reasons are “inequitable, inconsistent, or otherwise unreasonable.”

Whether an order so uncertain will be sustained by the courts must, of course, await the event. But certainly it would seem that it should be purged of uncertainty before it is entered.

APPENDIX No. 1.

Statement of apportionment of interstate revenue of year 1920 as divided between the Missouri & North Arkansas Railroad and its connections.

	Revenue under present divisions.	Average divisional percentages.	Average revenue per ton-mile of freight, 1920.	Services measured by revenue ton-miles of freight.		Average cost per ton-mile, 1920.	Services measured by relative cost.		Operating ratio based on relative cost, cols. 7+1.	Average cost and investment return per ton-mile. ¹	Services measured by relative cost and investment return. ²		Operating ratios all sources, 1920.
				Amount, cols. 1+3.	Percentage.		Amount, cols. 4+6.	Percentage.			Amount, cols. 4+10.	Percentage.	
...	3100, 806.11	23.208	30.01621	26, 779, 525	28.308	30.01621	9132, 539.71	60.524	1.20305	30.02576	9174, 640.86	43.140	108.00
...	219, 198.36	66.607	.01377	15, 918, 647	70.132	.01222	194, 524.64	59.476	.88744	.01446	230, 182.19	56.860	82.82
...	46, 702.82	42.350	.01631	2, 850, 266	35.091	.01965	55, 722.70	48.346	1.20305	.02576	72, 422.85	49.567	108.00
...	62, 895.20	57.650	.01193	5, 272, 020	64.909	.01223	64, 479.80	53.642	1.02514	.01417	74, 705.52	53.433	94.43
...	196, 207.63	53.905	.01621	12, 042, 420	47.762	.01965	235, 429.31	67.237	1.20305	.02576	310, 212.74	65.547	108.00
...	136, 165.06	41.095	.01034	13, 170, 704	52.288	.00871	114, 716.83	32.763	.94236	.01238	168, 053.32	54.453	82.12
...	113, 321.82	47.206	.01621	6, 990, 840	42.940	.01965	136, 070.92	54.045	1.20305	.02576	180, 094.04	55.690	108.00
...	126, 433.16	52.734	.01361	9, 230, 726	57.060	.01261	116, 214.46	45.965	.91918	.01343	142, 340.46	44.320	82.80
...	164, 914.65	46.364	.01621	10, 173, 688	36.799	.01965	165, 895.80	61.245	1.20305	.02576	262, 074.46	51.473	108.00
...	190, 632.33	53.616	.01091	17, 473, 174	63.201	.01083	180, 234.47	48.755	.96267	.01414	247, 070.68	48.527	95.46
...	247, 111.11	49.280	.01621	15, 244, 362	46.101	.01965	266, 027.26	54.112	1.20305	.02576	362, 694.77	57.947	108.00
...	254, 331.30	50.720	.01427	17, 822, 796	53.899	.01418	252, 737.26	45.887	.96360	.01590	284, 986.41	42.039	88.00
...	46, 202.82	42.350	.01631	2, 850, 266	37.216	.01965	55, 722.70	48.919	1.20305	.02576	72, 422.85	50.203	108.00
...	62, 895.20	57.650	.01308	4, 808, 502	62.784	.00808	36, 852.70	41.081	.61774	.01187	57, 076.92	42.757	85.78
...	110, 467.97	28.958	.01621	4, 816, 033	20.381	.01965	123, 263.64	34.503	1.20305	.02576	175, 581.14	34.409	108.00
...	271, 059.07	71.042	.01018	20, 620, 528	79.619	.00905	252, 982.97	65.497	.93320	.01257	334, 608.71	55.691	92.29

¹ Based on equated ton-miles.² The service as measured by amount necessary to pay operating expenses, taxes, equipment, and joint-facility rent, and a return of 6 per cent on book value of property.

APPENDIX No. 2.

Comparison of revenue and service percentages and average hauls developed from Appendix No. 1, with revenue and service percentages and average hauls derived from carriers' exhibits.

Comparisons of— (1)	From Appendix No. 1.					From carriers' exhibits.				
	Revenues. (2)	Revenues per- centages. (3)	Ton-miles. (4)	Average haul. (5)	Service per- centages. ¹ (6)	Revenues. (7)	Revenues per- centages. (8)	Ton-miles. (9)	Average haul. (10)	Service per- centages. ¹ (11)
Missouri & North Arkansas.....	\$109,886.11	33.393	6,770,525	203.38	29.87	(²)	.....	.....	.....	.....
Atchison, Topeka & Santa Fe.....	219,198.39	66.607	15,918,547	477.53	70.13	(²)	.....	.....	.....	.....
Missouri & North Arkansas.....	65,532.81	51.392	4,045,824	120	43.76	965,582.81	51.39	174,745	117	48.56
Chicago, Rock Island & Pacific.....	62,030.33	48.608	5,199,525	164.21	56.24	62,030.33	48.61	185,120	125	51.44
Missouri & North Arkansas.....	195,207.63	53.905	12,042,420	207.12	47.76	12,700.86	56.7	640,240	160	51.88
Kansas City Southern.....	136,185.08	41.095	13,170,704	226.53	52.24	9,698.33	43.3	593,853	148	48.12
Missouri & North Arkansas.....	113,321.52	47.266	6,990,840	173.05	42.93	(²)	.....	.....	.....	.....
Missouri, Kansas & Texas.....	126,433.16	52.734	9,289,725	236.6	57.07	(²)	.....	.....	.....	.....
Missouri & North Arkansas.....	164,915.65	46.384	10,173,698	175	36.8	(²)	.....	.....	.....	.....
Missouri Pacific.....	190,632.33	53.616	17,473,174	301.12	63.2	(²)	.....	.....	.....	.....
Missouri & North Arkansas.....	247,111.11	49.28	15,244,362	123	46.1	29,566.78	52.03	1,098,509	113	45.13
St. Louis-San Francisco.....	254,331.30	50.72	17,822,796	143.42	53.9	27,261.10	47.97	1,335,578	138	54.87
Missouri & North Arkansas.....	46,202.82	42.35	2,850,266	85	37.22	2,960.60	33.41	90,582	46	14.05
St. Louis Southwestern.....	62,895.20	57.65	4,808,502	142.61	62.78	5,940.06	66.59	553,940	285	85.95
Missouri & North Arkansas.....	110,487.97	28.958	6,816,038	112	20.38	110,487.97	28.96	5,502,517	90	20.64
Yazoo & Mississippi Valley.....	271,059.07	71.042	26,626,628	437.33	79.62	271,059.07	71.04	21,156,098	347	79.36

¹ Service percentages based on ton-miles.

² No comparable data furnished by carrier.

INVESTIGATION AND SUSPENSION DOCKET No. 1396.

ELIMINATION OF ROUTING ON LUMBER FROM S., P. & S. RY. VIA PASCO OR SPOKANE, WASH.

Submitted February 16, 1922. Decided March 20, 1922.

Proposed cancellation of joint rates on lumber and articles taking the same rates, in carloads, from points on the Spokane, Portland & Seattle to destinations in Montana, Idaho, Utah, and east on the Union Pacific system and connections, found not justified except as to points of origin west of Vancouver, Wash. Suspended schedules ordered canceled without prejudice to the filing of schedules in conformity with the findings herein.

H. A. Scandrett, W. A. Robbins, and J. M. Souby for Union Pacific system.

R. W. Pichard for Spokane, Portland & Seattle Railway Company.

R. J. Knott for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective September 10, 1921, respondents proposed to cancel the joint rates on lumber and articles taking the same rates, in carloads, from points on the Spokane, Portland & Seattle, hereinafter called the S., P. & S., to destinations in Montana, Idaho, Utah, and east applicable over its line to Pasco or Spokane, Wash., thence over the Northern Pacific to Silver Bow, Mont., and the Union Pacific system, hereinafter called the respondent, beyond. The proposed cancellation would result in the application of combination rates higher than the joint rates now in effect. Upon protest of the Western Pine Manufacturers' Association in behalf of certain of its members operating mills on respondent's line east of Vancouver, Wash., the operation of the schedules was suspended until February 7, 1922, and later voluntarily postponed by the carriers until April 25, 1922. Joint rates are in effect from stations west of Vancouver through Portland, Oreg., over a route not here under consideration, and there is no protest as to rates from these stations.

The line of the S., P. & S. extends easterly from Astoria, Oreg., through Portland and Vancouver, thence along the north bank of the Columbia River through Pasco to its terminus at Spokane. At the two last-named points it connects with the main line of the Northern Pacific. Silver Bow is 370 miles east of Spokane on the Northern Pacific's main line through Butte, Mont. The respondent's line east-bound from Portland extends along the south bank of the Columbia River about 165 miles through Coyote, Oreg., where it divides, the main line continuing southeasterly across Oregon and Idaho to Pocatello, Idaho, and points beyond. The other branch continues northwesterly from Coyote through Wallula, Wash., 213 miles east of Portland, to Spokane and other points in Washington and northern Idaho. A branch of the Northern Pacific running southeasterly from Pasco connects with respondent's line at Wallula, 14 miles. Respondent has a line extending north from Pocatello to Silver Bow where it connects with the main line of the Northern Pacific.

Although operated independently, the S., P. & S. is owned jointly by the Northern Pacific and the Great Northern, neither of which was represented at the hearing.

Klickitat, a station on the Goldendale branch of the S., P. & S., is the principal point of origin east of Vancouver. The following statement is illustrative of the rate increases, in cents per 100 pounds, which would result from points east of Vancouver if the proposed cancellation became effective:

From Klickitat to—	Present joint rate.	Proposed combination rate.
	Cents.	Cents
Garfield, Utah.....	49	74.5
Warner, Utah.....	49	74.5
Tocoelo City, Utah.....	50	76
International, Utah.....	50	76
Shoshone, Idaho.....	49	74.5
Granger, Wyo.....	49	74.5

No attempt was made to defend the increased rates which would result from the proposed cancellation. Respondents concede that the shippers interested should have the benefit of joint rates, but at the hearing they were not in agreement as to the junction point through which the joint rates should apply.

The distance from Klickitat to Pocatello is 930 miles via Silver Bow as compared with 744 miles via Wallula. Over the former route the S., P. & S., in connection with the Northern Pacific, has a haul of 675 miles as compared with 174 miles via Wallula. Respondent has a haul of 570 miles over the latter route as compared with 255 miles via Silver Bow.

Respondent contends that the provision of the existing tariff for routing via the Silver Bow gateway was the result of an error in the publication of the agency tariff in which this routing appears. It proposes that the error be corrected by eliminating the route via Silver Bow and opening a route via Wallula, through which it now publishes in connection with the Northern Pacific rates from points on the latter line. The result of closing the route via Silver Bow would be to deprive the S., P. & S. and the Northern Pacific of the longer haul which they now have upon this traffic. It appears to be immaterial to protestant which route is provided if the through rate be unaffected. No joint rate over the route via Wallula has yet been established. The witness for the S., P. & S. stated that the issue was primarily a controversy between that line and the respondent over a matter of routing, in which protestant was not directly interested. The S., P. & S. desires to continue the route via Silver Bow at the present rate. This route is about 200 miles longer than that by Wallula, but considering the length of the hauls and the nature of the commodity under consideration it does not appear to be unreasonably long.

We find that respondents have not justified the suspended schedules except as to rates from points west of Vancouver. An order will be entered requiring the cancellation of the proposed schedules and discontinuing this proceeding, without prejudice to the filing of schedules upon not less than five days' notice in conformity with our findings herein.

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INVESTIGATION AND SUSPENSION DOCKET No. 1476.

CLASS AND COMMODITY RATES FROM CHICAGO AND OTHER POINTS TO SOUTH ATLANTIC AND GULF PORTS FOR TRANSSHIPMENT VIA PANAMA CANAL.

Submitted March 22, 1922. Decided March 25, 1922.

Proposed proportional rates, representing reductions, from Chicago and related points to South Atlantic and Gulf ports for application on traffic destined to the Pacific coast by steamship lines operating through the Panama Canal found justified. Order of suspension vacated.

A. P. Humburg for respondents; *W. N. McGehee* for Mobile & Ohio Railroad Company, Southern Railway Company, and other South Atlantic port rail lines; and *Wm. Burger* for Louisville & Nashville Railroad Company.

Carl Giessow for New Orleans Joint Traffic Bureau; *R. G. Cobb* for Mobile Chamber of Commerce; *J. J. Wait* for Chicago Association of Commerce; *P. W. Coyle* for St. Louis Chamber of Commerce; and *J. C. Lincoln* for Merchants Association of New York.

Frank Lyon for Luckenbach Steamship Company; *Marion B. Pierce* for central territory lines; *B. W. Scandrett* for transcontinental lines; *Karl Knox Gartner* for Intermediate Rate Association; *C. A. Torrence* for Steele Steamship Line; *Luther M. Walter* for War Department, Mississippi-Warrior River Service; and *H. M. Wade* for Atlantic, Gulf & Pacific Steamship Corporation.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective February 15, 1922, and suspended on our own motion until June 15, 1922, respondents propose proportional rates, representing reductions, from Chicago, Ill., and related points to South Atlantic and Gulf ports on traffic destined to the Pacific coast by steamship lines operating through the Panama Canal. From Chicago and points usually taking the same rates to these ports, the rates proposed are the same as the local rates from Chicago to New York, N. Y., which are applied on traffic destined beyond by water. They are also proposed as maximum and minimum proportional rates from intermediate points south of Chicago. Rates differentially higher are proposed from a few points such as

Madison, Wis. The present local rates, wherever they are lower than the proposed proportionals, will remain applicable on the traffic in question.

The primary purpose of this proposal is to put the South Atlantic and Gulf ports on a parity with New York on traffic destined to the Pacific coast and to thus afford the southern lines an opportunity to secure some of the traffic now moving to the Pacific coast all rail or through North Atlantic ports by rail and water. In many cases the steamship rates are lower from South Atlantic and Gulf ports than from New York and the resulting through rates would be lower than via New York. It was for this reason that the schedules were suspended, it being thought advisable to determine whether the southern lines and the southern ports would be afforded an undue advantage and whether the transcontinental lines might be prompted to reduce their rates below what had already been proposed in fourth section application No. 12063. In that proceeding, which has been heard and is now pending, those lines, to meet the competitive situation created by coast-to-coast steamship lines, seek authority to establish lower rates to the Pacific coast terminals than those in effect to intermediate points. The rates there proposed are for application not only from points where the competition exists but also from interior points as far west as the Rocky Mountains. Interior points, such as Chicago, are there proposed to be kept by rail on a parity with points in Atlantic seaboard territory. The southern lines, by the rates here proposed, are seeking to put Chicago and the related points more nearly on a parity with points farther east having lower rates via rail and water through North Atlantic ports, which is not unlike what the transcontinental lines are proposing in the fourth section application.

The record establishes that it would require much more than equality of through rates to induce a large movement of the traffic through South Atlantic and Gulf ports. The distance by water to San Francisco, Calif., from New York is about 660 miles greater than from New Orleans, La., the distance from New York being about 6,060 miles as against 5,400 miles from New Orleans, but North Atlantic ports offer much more attractive service. About three vessels per week clear from those ports as against about three per month from Gulf ports. The principal lines from North Atlantic ports operate larger and faster vessels and maintain regular sailing dates on which the vessels depart whether fully loaded or not. Those from Gulf ports have no fixed sailing schedules and stay in port until fully loaded.

On many items the water rates have been lower from Gulf ports than from North Atlantic ports, but it was expected that the number

of such items would be considerably reduced on or about March 1, 1922, and the differences in rates, where they still existed, made less than formerly. We are not informed whether this has been done. The witnesses of the Gulf steamship lines testify that they intend to further harmonize their rates with those applying from North Atlantic ports for the reason that present rates are not remunerative. Long delays at the Gulf ports make the service particularly expensive.

The transcontinental rail lines oppose the proposed rates because they would in some few cases result in lower through rates from Chicago than those now available and would thus tend to draw through South Atlantic and Gulf ports some of the traffic which the transcontinental lines might otherwise handle. They suggest that it would be unfair to allow these proportional rates to become effective before the all-rail rates proposed in the fourth section application above referred to are allowed to become effective. But the transcontinental lines are proposing to depart from the rule of the fourth section, which they may not do except under authority from us in special cases, while the southern lines make no such proposal.

The transcontinental lines suggest that respondents, in swinging the entire Chicago-New York adjustment around to South Atlantic and Gulf ports, are making an unwarranted wholesale reduction in rates and that some of the rates proposed are less than are necessary to meet the situation for the stated reason that the traffic is all moving freely on the present local rates to those ports.

Upon the record we find that respondents have justified the proposed schedules, and an order will be entered vacating the order of suspension.

No. 10498.¹

ROXANA PETROLEUM COMPANY OF OKLAHOMA

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY, ET AL.

Submitted July 11, 1921. Decided March 14, 1922.

Rates on refined petroleum oils, in tank-car loads, from Cushing, Pemeta, Oilton, and Blackwell, Okla., to Little Rock, Ark., found unreasonable. Reparation awarded. Maximum reasonable rates prescribed. Original report in No. 10498, 55 I. C. C., 607, affirmed.

Ralph Merriam and *W. R. Scott* for Producers & Refiners Corporation; *C. D. Chamberlin* for National Refining Company; and *Clifford Thorne* and *W. Y. Wildman* for all complainants.

W. F. Evans and *M. G. Roberts* for director general, as agent, Chicago, Rock Island & Pacific Railway Company, and St. Louis-San Francisco Railway Company; *S. W. Hayes* for Atchison, Topeka & Santa Fe Railway Company and Chicago, Rock Island & Pacific Railway Company; and *T. J. Norton* and *F. E. Andrews* for director general, as agent, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Missouri Pacific Railroad Company, and Fort Smith & Western Railroad Company and receiver.

H. W. Robertson for Sinclair Refining Company, intervener.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

Exceptions were filed by the Director General of Railroads, as agent, to the report proposed by the examiner. Our conclusions differ in certain respects from those recommended by the examiner.

These proceedings were separately heard, but present related issues and will be disposed of in one report. Complainants are corporations, most of which are engaged in Oklahoma in producing and refining petroleum and its products. They allege in their several complaints that the rates charged on various tank-car loads of refined petroleum oils, including gasoline, shipped from Cushing,

¹This proceeding also embraces No. 10772, National Refining Company v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.; No. 11000, Producers & Refiners Corporation v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.; and No. 11580, Kanotex Refining Company et al. v. Director General, as Agent, Chicago, Rock Island & Pacific Railway Company, et al.

Pemeta, Oilton, and Blackwell, Okla., to Little Rock, Ark., were, and that the present rates are, unreasonable, unjustly discriminatory, and unduly prejudicial. Overcharges on certain shipments and violations of the long-and-short-haul provision of the fourth section of the interstate commerce act are also alleged. We are asked to award reparation and to prescribe just and reasonable rates for the future. The Sinclair Refining Company, which has a refinery at Cushing, intervened in No. 10498. All defendant carriers were under Federal control except the Fort Smith & Western and its receiver, defendants with others in No. 10772.

Rates will be stated in cents per 100 pounds and, unless otherwise indicated, are those which were in effect immediately prior to August 26, 1920. On June 25, 1918, the rates on petroleum products were increased 25 per cent under the authority of general order No. 28 of the director general. Shortly thereafter under freight rate authority No. 96 they were readjusted to a uniform increase of 4.5 cents per 100 pounds over the rates in effect on May 25, 1918. Some of complainants' shipments moved prior to June 25, 1918, and others after the effective date of the readjustment, but before the general increase authorized by us on July 29, 1920. Reparation is sought to the basis of rates of 19 cents prior to June 25, 1918, and 23.5 cents between that date and the date of the general increases of 1920. All shipments moved as routed by the respective shippers.

No. 10498, filed by the Roxana Petroleum Company of Oklahoma, covers five carloads shipped from Cushing December 29, 1917, and in January, 1918. They moved over the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, to Shawnee, Okla., and Chicago, Rock Island & Pacific, hereinafter called the Rock Island, beyond. In our original report, *Roxana Petroleum Co. v. Director General*, 55 I. C. C., 607, we found that these shipments were undercharged in the application thereto of a combination rate of 39 cents, and that the applicable joint fifth-class rate of 63 cents was unreasonable to the extent that it exceeded 19 cents. We awarded reparation to that basis, and prescribed a maximum rate for the future of 23.5 cents. Upon defendants' petition this case was reopened for further hearing, but the order entered upon the original hearing was not vacated, and effective June 16, 1920, the rate prescribed was established. The record does not disclose whether reparation has been paid. It now appears that under exceptions to the classification class rates could not have been applied to this traffic, so that the joint fifth-class rate of 63 cents was not applicable; and our former report is modified to this extent. The rate that should have been assessed was the Memphis, Tenn., combination of 35 cents, composed of a 19-cent rate from Cushing to Memphis, plus a rate of 16 cents back over the same route

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to Little Rock, under rule 5 (b) of Tariff Circular 18-A. The shipments were overcharged.

The distance from Cushing to Little Rock over the route of movement is 364.5 miles. A rate of 19 cents contemporaneously applied over the following routes: Santa Fe to Arkansas City, Kans., and the Missouri Pacific beyond, 512 miles; Missouri, Kansas & Texas to Joplin, Mo., and Missouri Pacific beyond, 568 miles; Missouri, Kansas & Texas to Wagoner, Okla., and Missouri Pacific beyond, 362 miles; and Missouri, Kansas & Texas to McAlester, Okla., and Rock Island beyond, 414.3 miles. The 19-cent rate was increased to 23.5 cents during the year 1918, and that rate was made applicable also over the Santa Fe to Sparks, Okla., the Fort Smith & Western to Fort Smith, Ark., and Missouri Pacific beyond. Effective February 29, 1920, the rate via Arkansas City, 512 miles, was further increased to 27.5 cents.

No. 11099, filed by the Producers & Refiners Corporation, covers 10 carloads shipped from Blackwell during March and April, 1919. These moved over the Santa Fe to Oklahoma City and the Rock Island beyond, 464.9 miles. No joint rate was in effect over this route and they were charged at the applicable Memphis combination of 39.5 cents, constructed by adding 4.5 cents to the aggregate of the factors to and back from that point in effect on May 25, 1918. These factors were 19 and 16 cents, applicable under rule 5 (b). A joint rate of 23.5 cents contemporaneously applied over three other routes: Santa Fe to Arkansas City and Missouri Pacific beyond, 457 miles; St. Louis-San Francisco hereinafter called the Frisco, to Claremore, Okla., and Missouri Pacific beyond, 459 miles; and Frisco to Holdenville, Okla., and Rock Island beyond, 536 miles, hereinafter referred to as the Holdenville route. This rate over the routes through Arkansas City, 457 miles, and Claremore, 459 miles, was increased to 27.5 cents effective February 29, 1920.

No. 11580, filed by the Kanotex Refining Company and the Producers & Refiners Corporation, covers two carloads shipped from Blackwell during February and March, 1918, reparation being asked in favor of the first-named complainant. These moved over the Frisco to Enid, Okla., and the Rock Island beyond, 489 miles. Charges were assessed at a combination rate of 53 cents, composed of a distance fifth-class rate of 18 cents to Enid, a commodity rate of 14 cents from that point to Oklahoma City, and a commodity rate of 21 cents beyond. The applicable rate was the Memphis combination of 35 cents, composed of the commodity rate of 19 cents from Blackwell to Memphis, and the local rate of 16 cents back over the same route to Little Rock, under rule 5 (b). These shipments were overcharged. A joint rate of 19 cents contemporaneously applied to Lit-

the Rock over the three other routes described in the preceding paragraph in connection with the 23.5-cent rate.

The complaint, as amended, in No. 10772, filed by the National Refining Company, covers 14 carloads, of which 11 originated at Pemeta and 3 at Oilton. These points are on a short branch of the Santa Fe extending northeasterly from Cushing to Jennings, Okla. The shipments moved through Cushing, one from Pemeta on June 24, 1917, Santa Fe to Shawnee, and the Rock Island beyond, and the remainder, Santa Fe to Sparks, Fort Smith & Western to Fort Smith, and Missouri Pacific beyond. Three of the shipments through Sparks moved on October 28, December 5, and December 13, 1917, respectively, two in February and April, 1918, and the others on August 29, 1918, and subsequently. Prior to June 25, 1918, the applicable rates over the route through Sparks were 28 cents from Pemeta and 29 cents from Oilton, constructed on the Sparks combination, 7 and 8 cents, respectively, to that point and 21 cents beyond. As a result of the uniform increase of 4.5 cents, these rates, effective August 1, 1918, became 32.5 cents from Pemeta and 33.5 cents from Oilton. The rate applicable to the shipment which moved through Shawnee was 36 cents, constructed on the combination of 20 cents to Memphis and 16 cents back to Little Rock. Apparently the shipments in this proceeding were charged rates varying from 32.5 to 66.5 cents and some were overcharged.

Prior to June 25, 1918, the local rate over the Santa Fe from Pemeta and Oilton to Cushing was 5 cents, and that rate in connection with the 19-cent rate beyond resulted in a combination rate of 24 cents, available on traffic moving beyond Cushing over the routes to which the 19-cent rate applied. Effective August 1, 1918, this combination became 28.5 cents.

The allegations of unjust discrimination and undue prejudice in the four cases were in substance abandoned upon the hearing, and the issues therein are similar except that certain additional questions are raised in Nos. 10772 and 11580.

Complainants could have secured lower rates on each shipment by leaving the routing open or by selecting routes over which the lower rates applied. One of the complainants concedes that an error was made by the shipper, but all ask reparation to the basis of the lower rates contemporaneously in effect over other routes, and the rates to Memphis. The mere fact that the rate between two points is higher over one route than over others does not in itself establish that the higher rate is unreasonable; but complainants were entitled to reasonable rates over the routes selected by them.

Complainants contend that the 23.5-cent rate to Little Rock is a group rate, and show about 14 points in Oklahoma from which

it applied over specified routes, while defendants maintain that on this traffic to Arkansas points there is no agreed or well-defined grouping. Both Cushing and Blackwell are more distant from Little Rock than most of the points shown. According to the exhibited distances, Blackwell, 457 miles, is the farthest point, Okmulgee, 280 miles, is the nearest, the average being about 357 miles. Upon this record it is not shown that the maximum reasonable rate from Cushing should necessarily be applied from Blackwell, approximately 100 miles farther, or that the grouping of points 280 and 457 miles from a common destination is reasonable.

Complainants compare the rate prescribed in our original report in No. 10498, the rates therein assailed, and the rates sought, with numerous rates prescribed by us, some of which are shown in the following table, with distances and earnings:

Haul.	Route.		Rate.	Earnings per ton- mile.
	Distance.	Description.		
No. 10498.				
Cushing to—	Miles.		Cents.	Mills.
Little Rock.....	365	Distance over routes of movement of complainants' shipments.	¹ 25	19.2
Memphis.....	497	.....	² 23.5	9.25
St. Louis.....	³ 530	.....	⁴ 24.5	.....
No. 10772.				
Pemeta to Little Rock.....	391	By way of Sparks.....	32.5	16.62
Oilton to Little Rock.....	403	.....do.....	33.5	16.63
Pemeta and Oilton to—				
Memphis.....	510	By way of Shawnee.....	24.5	9.6
St. Louis.....	629	.....do.....	25.5	8.11
No. 11580.				
Blackwell to—				
Little Rock.....	488.9	By way of Enid.....	⁵ 35	.....
Do.....	489.3	Average of three other routes over which the 19-cent rate applied.	⁶ 19	.....
Memphis.....	597	Short-line distance.....	⁶ 19	.....
Des Moines.....	493	.....	⁶ 22.5	.....
No. 11099.				
Blackwell to—				
Little Rock.....	465	By way of Oklahoma City.....	39.5	17
Memphis.....	597	Short-line distance.....	23.5	7.9
St. Louis.....	448	Average from midcontinent group 3...	24.5	10
Omaha.....	449	Average from Oklahoma group.....	⁷ 27.5	.....

¹ Applicable rate 35 cents; rate of 23.5 cents was found reasonable in original report in No. 10498, 55 I. C. C., 607, and includes the 4.5-cent increase.
² Rate of 19 cents found reasonable from Coffeyville, Kans., to Memphis in *National Petroleum Assn. v. M. P. Ry. Co.*, 18 I. C. C., 593, plus 4.5 cents.
³ Average distance from midcontinent group 3 is 448 miles.
⁴ Rates found reasonable in *Midcontinent Oil Rates*, 36 I. C. C., 109, plus 4.5 cents.
⁵ Prior to June 25, 1918.
⁶ Rate prescribed in *Midcontinent Oil Rates*, *supra*, from Oklahoma group.

The rate prescribed by us in the original report in No. 10498 from Cushing to Little Rock, 23.5 cents, 365 miles, yielding 12.88 mills per ton-mile, was considerably higher, distance considered, than the same rate from Cushing to Memphis, 497 miles, yielding 9.46 mills
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per ton-mile. The latter is the rate prescribed in *National Petroleum Asso. v. M. P. Ry. Co.*, 18 I. C. C., 593, from Coffeyville to Memphis, 469 miles, increased 4.5 cents. The rate prescribed in our original report was also higher, distance considered, than the rate of 24.5 cents from Cushing, and from the midcontinent group 3, average distance 448 miles, to St. Louis. The latter rate is that prescribed by us in *Midcontinent Oil Rates*, 36 I. C. C., 109, plus 4.5 cents, and is the key rate upon which the decision in that comprehensive investigation was founded.

At the further hearing defendants pointed out no errors in the statement of facts upon which our decision was based. The additional evidence presented does not warrant a reversal or modification of our conclusions with respect to the rate assailed from Cushing.

Except with respect to No. 11580, defendants do not undertake to justify the maintenance of rates over the routes of movement higher than over the other routes described. They urge that over the other routes rates are not high enough. A witness called by the Santa Fe testified that the rates in no event should have been lower during this period between June 24, 1918, and August 26, 1920, than 27.5 cents from Cushing and Blackwell, and 28.5 cents from Pemeta and Oilton. Over the routes of movement in connection with this carrier the ton-mile earnings under a rate of 27.5 cents from Cushing and Blackwell would be 15.1 and 11.8 mills, respectively.

The rates assailed in No. 10772 from Pemeta and Oilton to Little Rock yielded ton-mile earnings for 391 and 403 miles, which were more than double those under the rate from both points to St. Louis, Mo., 629 miles, and nearly double the earnings under the rate to Memphis, a farther-distant point over the same route. These rates were clearly excessive and should not have exceeded or exceed the rates from Cushing to Little Rock. In *Western Petroleum Refiners' Asso. v. Director General*, 59 I. C. C., 38, we recently found that the rates on petroleum and its products from Pemeta and Oilton to interstate destinations on the lines of the carriers defendant therein which would include Little Rock and Memphis, were unreasonable and unduly prejudicial to the extent that they exceeded, by way of Cushing and the Santa Fe and its connections, the rates on like traffic contemporaneously maintained by that carrier from Cushing and certain other main-line points. The evidence adduced upon this record supports a like conclusion.

From the table above it will be noted that the rates assailed from Blackwell in Nos. 11580 and 11099 were considerably higher, distance considered, than rates prescribed by us for similar distances from the group in which Blackwell is located to Memphis, St. Louis, Omaha, Nebr., and Des Moines, Iowa, but that the rate sought of 23.5 cents

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would be lower than the rates of 24.5 cents to St. Louis and 27.5 cents to Omaha for slightly shorter hauls. A rate of 27.5 cents from Blackwell to Little Rock, over the routes of movement would be in line with the rates to Omaha and Des Moines. Defendants in these two proceedings show that the rates of 19 cents prior to June 25, 1918, and 23.5 cents subsequent to August 1, 1918, were unduly low for application over any of the open routes from Blackwell to Little Rock. In No. 11580 the Frisco objects to the establishment of a joint rate over the route of movement, contending that the Holdenville route is not unreasonably long, and that under section 15 of the act it is entitled to the materially longer haul afforded by that route. Complainants say that service over the route of movement is more expeditious than service over any of the other routes by which the 19-cent rate applied, and that service over the Holdenville route was and is particularly unsatisfactory.

Prior to the movement, the Kanotex Refining Company purchased from the Producers & Refiners Corporation the gasoline comprising the shipments considered in No. 11580, and although a stranger to the transportation transaction, it was in reality the consignor and bore the charges in excess of those which would have accrued on the basis of the rate applicable over the other routes.

The following matters are to be noted respecting the application of the fourth section to the rates maintained in connection with the Santa Fe from Cushing and Blackwell. The applicable rates over the routes of movement, higher to Little Rock than to Memphis, were and are in contravention of the fourth section of the act, and not being protected by appropriate applications or orders, the adjustments were and are unlawful. The testimony discloses that over some routes other than the routes of movement the rates, at least from Cushing, are higher to a number of Oklahoma points intermediate to Little Rock than to that destination, although it is not disclosed whether those adjustments are lawfully maintained. While such adjustments are not here before us the Santa Fe contends that the establishment of the rate asked from Cushing would necessitate material reductions in the rates to certain Oklahoma points intermediate to Little Rock over the route of movement, the exhibits showing that to some of those points the rate is 31.5 cents. Moreover, the rate asked from Blackwell would require a reduction in the rate from Oklahoma City, the rate from that point to Little Rock being 25.5 cents. Defendants ask us to set aside the order heretofore entered in No. 10498, and request that in these cases "an order be made in such terms as will permit of proper adjustment of rates to Little Rock and Memphis, so that suitable advances may be

made in the rates that are now too low and that they may be able to iron out fourth section departures."

We find that the rates assailed in Nos. 10498 and 10772 from Cushing, Pemeta, and Oilton to Little Rock over the routes of movement were unreasonable to the extent that they exceeded 19 cents prior to June 25, 1918, and 23.5 cents per 100 pounds subsequent to August 1, 1918, and prior to the general increases authorized by us on July 29, 1920; and are and for the future will be unreasonable to the extent that they exceed or may exceed 23.5 cents per 100 pounds plus the increase authorized on the last-named date.

No finding with respect to the claim for reparation in No. 10498 is deemed necessary in view of the award made in our original report.

We further find that complainant in No. 10772 made the shipments from Pemeta and Oilton as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable from Pemeta and Oilton; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

We further find that the rates assailed over the routes of movement from Blackwell in No. 11580 were unreasonable to the extent that the rate prior to June 25, 1918, exceeded 23 cents per 100 pounds and in No. 11099 to the extent that the rate subsequent to August 1, 1918, and prior to the general increase authorized by us on July 29, 1920, exceeded 27.5 cents per 100 pounds, and are and for the future will be unreasonable to the extent that they exceed, or may exceed, 27.5 cents per 100 pounds plus the increase authorized by us on the last-named date. We further find that complainants in Nos. 11580 and 11099 made the shipments as described and paid and bore the charges thereon; that they have been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable from Blackwell; and that they are entitled to reparation, with interest. These complainants should comply with Rule V of the Rules of Practice.

An order for the future will be entered.

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No. 12034.
NEW BEDFORD BOARD OF COMMERCE
v.
DIRECTOR GENERAL, AS AGENT.

Submitted September 16, 1921. Decided March 18, 1922.

Rate charged on cotton yarns from New Bedford Wharf, Mass., to Pier 40, North River, New York, N. Y., by water, during Federal control found unreasonable and unduly prejudicial. Reparation awarded.

A. H. Ferguson for complainants.

W. L. Barnett for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

The New Bedford Board of Commerce by complaint, as amended, filed in behalf of certain members,¹ hereinafter called complainants, corporations manufacturing cotton yarns at New Bedford, Mass., alleges that the rate charged on numerous less-than-carload lots of cotton yarns, on beams and in cases, shipped during the period April 16 to May 5, 1918, inclusive, from New Bedford Wharf, Mass., to Pier 40, North River, New York, N. Y., was unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section of the interstate commerce act. Reparation only is sought. Rates will be stated in cents per 100 pounds, and those not on file with us are taken from the record.

The movement of these shipments was entirely by water in vessels of the New England Steamship Company, hereinafter called the water line. Charges were collected at the any-quantity rule-25 class rate of 25.5 cents. Complainants seek reparation to the basis of the commodity rate of 15 cents contemporaneously maintained by defendant over the water line on cotton piece goods, any quantity, from New Bedford Wharf to New York, which became effective May 6, 1918, on cotton yarns and finished cotton articles. The tariffs carrying these rates were filed with the Shipping Board but not with us.

Defendant challenges our jurisdiction to award reparation on shipments handled at port-to-port rates not filed with us. Section

¹ Holmes Manufacturing Company, Manomet Mills, Nonquitt Spinning Company, Passaic Cotton Mills, Quissett Mill, Sharp Manufacturing Company, and Wamsutta Mills.

206(c) of the transportation act, 1920, gave us jurisdiction to entertain complaints seasonably filed "praying for reparation on account of damage claimed to have been caused by reason of the collection or enforcement by or through the President during the period of Federal control of rates * * * (including those applicable to interstate, foreign, or intrastate traffic) which were unjust, unreasonable, unjustly discriminatory, or unduly or unreasonably prejudicial, or otherwise in violation of the Interstate Commerce Act." The water line formed part of a combined rail-and-water system of transportation taken into Federal control by proclamation of the President dated December 26, 1917, and thus came under the provisions of the Federal control act. It was under Federal control and operation during the period of movement and the charges complained of were collected "by or through the President."

Cotton yarns and cotton piece goods always have been accorded the rule-25 rating in official classification territory. For a number of years prior to April 16, 1918, and continuously since May 5, 1918, any quantity, the cotton-piece-goods basis of commodity rates, has been maintained on cotton yarns and on partially or wholly finished cotton articles. The same relative adjustment has been in effect for many years on shipments of these commodities moving all rail from New England mills to New York over the New York, New Haven & Hartford, or over the rail-and-water route of the New Haven to New Bedford Wharf and the water line beyond. In April, 1917, both the New Haven and the water line published tariffs wherein it was proposed to increase the commodity rates on cotton piece goods and to eliminate cotton yarns and wholly or partially finished textiles from the list of articles taking those rates, leaving applicable thereon the higher class rates. In *New England Dry Goods*, 49 I. C. C., 147, we approved proposed increases in the piece-goods rates, but found that the respondents had not, upon that record, justified the application of rates on finished cotton goods higher than on piece goods. Accordingly, the piece-goods rates, as increased, were continued in effect on cotton yarns and finished textiles over the all-rail and rail-and-water routes. Effective April 16, 1918, defendant increased from 12 cents to 15 cents the port-to-port rate on cotton piece goods from New Bedford Wharf to New York and provided for the application of the classification basis of rates on all other cotton articles, including yarns. This adjustment of the port-to-port rates remained in effect for a period of 20 days only; on May 6, 1918, defendant restored the cotton-piece-goods commodity rates on cotton yarns and wholly or partially finished cotton goods. A close relationship between the rail-and-water and the port-to-port rates has existed at all times.

In addition to the 15-cent rate on cotton piece goods complainants instance, by way of comparison, any-quantity commodity rates ranging from 17.5 to 25 cents contemporaneously maintained on all cotton goods moving rail and water from interior Massachusetts mills over New Bedford Wharf to defendant's New York pier. The rail hauls to New Bedford Wharf from mills which have the benefit of the lower rates range from 13 miles on shipments from Watuppa to 89 miles from Fitchburg. Complainants were in direct and active competition with yarn manufacturers shipping from these and other points in Massachusetts.

Complainants introduced the following comparison of ton-mile revenue from all-water rates during the short period covered by the complaint:

From—	To—	Dis- tance.	Cotton yarns.		Cotton piece goods.	
			Rates.	Reve- nue per ton- mile.	Rates.	Reve- nue per ton- mile.
		<i>Statute miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
New Bedford Wharf, Mass....	Pier 40, North River, New York, N. Y.	180	25.5	2.7	15	1.6
Metropolitan Steamship Line piers, Boston, Mass.	Metropolitan Steamship Line piers, New York, N. Y.	264	23	1.7	23	1.7
M. & M. T. Co. pier, Boston, Mass.	Philadelphia, Pa.....	547	38	1.4	38	1.4
Providence (Fox Point), R. I.	Norfolk, Va.....	460	41	1.7	41	1.7
Clyde Steamship Co. pier, New York, N. Y.	Clyde Steamship Co. pier, Wilmington, N. C.	630	25	.8	30	.9
Clyde Steamship Co. pier, Philadelphia, Pa.	.....do.....	554	25	.9	33	1.2
Old Dominion Steamship Co. pier, New York, N. Y.	Old Dominion Steamship Co. pier, Norfolk, Va.	380	21	1.1	21	1.1
Old Dominion Steamship Co. pier, New York, N. Y.	Old Dominion Steamship Co. pier, Richmond, Va.	474	21	.9	21	.9

It will be observed that, except from New Bedford Wharf, the cotton-yarn rates were the same as or lower than the rates on cotton piece goods; also that in the majority of instances the ton-mile earnings under the 15-cent rate on cotton piece goods from New Bedford Wharf to New York exceeded those under the cotton-yarn rates with which comparison is made. Complainants also refer to commodity rates to New York on woolen piece goods classified first class, any quantity, of 20 cents from New Bedford Wharf and 22.5 cents from Watuppa in effect during the period of movement.

The long-standing relationship between the port-to-port and the rail-and-water rates from Massachusetts mills to New York was disrupted by the application of the classification basis of rates on cotton yarns and finished cotton goods moved from New Bedford Wharf and the continuance of the cotton-piece-goods commodity rates on cotton yarns and finished articles from the interior mills.

No distinction was made by the Eastern Steamship Company in its rates on piece goods, yarns, and finished textiles. On port-to-port traffic to New York from Boston, 264 miles, as compared with 189 miles from New Bedford Wharf, that company maintained rates of 23 cents on cotton goods of all kinds and 28 cents on all woollen goods.

New York is an important distributing center for textiles manufactured in New England. Complainants cite *New Bedford Board of Commerce v. Director General*, 55 I. C. C., 274, in which we said that representatives of the water line had testified that 90 per cent of its traffic from New Bedford is cotton goods of various kinds; that the commodity rates thereon are made with relation to the rates from interior New England points; and that the large volume of traffic in these commodities practically sustains the operation of the water line. Shipments of yarns occupy no greater space aboard vessels than do other cotton goods, and claims thereon for loss or damage in transit are negligible.

Defendant contends that for many years commodity rates generally on cotton piece goods have been unduly low, and that the class rate assailed was not unreasonable. Reference is made to a commodity rate of 30 cents in effect during the period of movement on cotton yarns moving by the Eastern Steamship Company from Boston to Camden, Me., 183 miles, but no evidence was offered concerning the volume of the movement under that rate. Complainants urge that the rate of 23 cents in effect by the same steamship company from Boston to New York affords a fairer comparison.

In many instances the rate assailed exceeded the rail-and-water rates in effect from more distant points; but since the restoration of the commodity basis of rates on cotton yarns and finished cotton goods the rates from New Bedford Wharf no longer exceed the rates from the interior Massachusetts mills.

We find that the rate assailed was unreasonable and unduly prejudicial to the extent that it exceeded 15 cents per 100 pounds; that the members of the New Bedford Board of Commerce named in the complaint made shipments as described and paid and bore the charges thereon; that they have been damaged thereby in the amounts of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that they are entitled to reparation, with interest. Each of those members should comply with Rule V of the Rules of Practice.

INVESTIGATION AND SUSPENSION DOCKET No. 1456.
ELIMINATION OF GREEN FRUIT AUCTION COMPANY
FROM LIST OF CHICAGO, MILWAUKEE & ST. PAUL IN-
DUSTRIES.

Submitted March 1, 1922. Decided March 27, 1922.

Proposed application in certain instances of switching charges at Chicago, Ill., on fruits, in carloads, destined to the Green Fruit Auction Company, when the road haul has been performed by carriers other than respondent, found justified. Order of suspension vacated.

O. W. Dynes for respondent.

R. Cummings for American Fruit & Vegetable Shippers' Association; *Elmer E. Aird* for United States Cold Storage Company; and *G. F. Ford* for G. H. Hammond Company, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective December 20, 1921, and January 15, 1922, respondent, Chicago, Milwaukee & St. Paul Railway, proposes to strike the Green Fruit Auction Company from the list published in its tariffs of industries on its rails at Chicago, Ill. The effect of the proposed cancellation, with certain exceptions, will be the assessment of a switching charge on carload shipments of fruit on which other carriers have performed the road haul. Protests were received from the American Fruit & Vegetable Shippers' Association, hereinafter called protestant, and others, and the schedules were suspended until April 19 and May 15, 1922, respectively.

Protestant is a selling organization of growers and shippers of citrus and deciduous fruits, and rents from respondent space for its auction rooms in a building situated on Kinzie Street in one of the most congested sections of Chicago. Shipments arriving at Chicago over rails other than respondent's are delivered to respondent at Galewood, Bensenville, Franklin Park, Cragin, or Western Avenue, interchange points distant 10 to 15 miles from the auction rooms. Delivery is now made at the Chicago rates. If the suspended schedules become effective, a switching charge of 8.5 cents per 100 pounds, minimum 24,000 pounds, will be added when the shipments

arrive at Chicago over respondent's connections, except where such connections provide for absorption of the charge. The Chicago, Burlington & Quincy, Wabash, and Chicago Great Western are the only carriers whose tariffs now provide for such absorption. Shipments upon which respondent receives the road haul into Chicago will continue to be delivered at the Chicago rates. The average loading of the fruit shipments received is 26,000 pounds, and the 8.5-cent charge will result in an average charge of \$22.10 per car.

The fruit is shipped principally from the Pacific and Rocky Mountain States, Florida, and Alabama. During 1921, 3,709 cars were received, of which 1,178 arrived at Chicago over respondent's rails. Of the remainder, protestant estimates that 80 per cent were delivered to respondent at Western Avenue, the interchange point nearest the auction rooms.

There are two other fruit auctions in Chicago—one on the Chicago & North Western and the other on the Illinois Central. They are not listed as industries and, except as hereinafter indicated, a switching charge of 8.5 cents per 100 pounds is assessed on shipments thereto if the road haul is not performed by the delivering line. The Chicago & North Western and the Illinois Central, apparently under a reciprocal arrangement, absorb the switching charges of each other on deciduous fruits only; the Cleveland, Cincinnati, Chicago & St. Louis absorbs the switching charge of the Illinois Central upon both deciduous and citrus fruits; and the Chicago, Burlington & Quincy, Wabash, and Chicago Great Western make the same absorptions as upon shipments to protestant. Respondent does not absorb the switching charge of either the Chicago & North Western or the Illinois Central, but has indicated its willingness to do so.

Respondent states that the purposes of the suspended schedules are to place protestant on the same basis as the auctions on the Chicago & North Western and the Illinois Central and to secure for itself adequate revenue for the service it performs on shipments switched for other lines.

Fruit, in carloads, is generally classified third, fourth, or fifth class. Respondent shows that the 8.5-cent charge is materially lower than the third, fourth, and fifth class rates in Illinois, Wisconsin, and Indiana for 10 and 15 miles. The rate on fruit and other farm products has been temporarily reduced 10 per cent.

At Pittsburgh, Pa., the fruit auction is on the Pennsylvania, which charges class rates for switching from connecting lines to the auction rooms. The rates from its connection with the Baltimore & Ohio are 24 cents third class, 17.5 cents fourth class, and 15.5 cents fifth class. At New York, N. Y., the Erie Railroad

charges \$40 per car for switching cars of fruit from connecting lines to its Duane Street auction rooms.

Protestant offered testimony to show that it provides a necessary facility for the proper handling of fruit at Chicago, and that it will not always be possible to so route reconsigned shipments as to avoid assessment of the switching charge. The evidence before us justifies the conclusion that the proposed schedules will not seriously affect the business of protestant. The fact that the switching charge will in some cases accrue against the traffic does not of itself constitute a ground for condemning the proposed schedules. If the suspended schedules are permitted to become effective, several routes will be available for delivery to protestant at the Chicago rates, and that auction house will be substantially as well circumstanced, from the standpoint of free terminal delivery, as the other auction houses.

We find that the proposed schedules have been justified and an order vacating the suspension and discontinuing the proceeding will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1437.¹
SAND AND GRAVEL FROM WOLCOTTVILLE, IND., TO
CHICAGO, ILL.

Submitted February 13, 1922. Decided March 27, 1922.

Proposed increased rates on sand and gravel from Wolcottville, Ind., to Chicago, Ill., found justified. Orders of suspension vacated.

L. H. Strasser for respondents.

Clarence B. Cardy, Charles E. Heckler, and P. J. Wimsey for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective November 8, 1921, the Wabash, hereinafter referred to as respondent, in conjunction with other carriers serving the Chicago (Ill.) district, proposes to establish the following rates on sand and gravel from Wolcottville, Ind., to points in the Chicago district, stated in amounts per net ton: 98 cents to Wabash deliveries only; \$1.26 to industries on connecting lines; and \$1.40 to team tracks of connecting lines. Subsequently schedules were filed in which it is proposed to amend the so-called Lowrey tariff, providing terminal charges, rules, and regulations in connection with traffic from or to points within the Chicago district, by excepting from the application of that tariff shipments of sand and gravel from points on respondent's line outside the district, effective January 1, 1922. Operation of the two sets of schedules was suspended until April 7 and May 1, 1922, respectively, upon protest of the Northern Indiana Sand & Gravel Company, a corporation which has a plant at Wolcottville. Separate hearings were had in the two proceedings, but the facts presented are so closely related that both will be disposed of in one report.

Wolcottville, 135 miles east of Chicago, is the junction of respondent's Chicago-Detroit line with the Grand Rapids & Indiana. Effective April 19, 1921, a rate of \$1.12 on sand and gravel from Wolcottville to Chicago was established by respondent, applying "to Wa-

¹ This report also embraces Investigation and Suspension Docket No. 1464, Restriction of Sand and Gravel Rates at Chicago, Ill., when Originating on the Wabash Railway.

Wabash Ry. deliveries only." The tariff naming this rate contained the following provision:

Freight transported under this tariff, in addition to rates named herein, will be subject to the current rules and regulations of the Wabash Railway, * * * which are published and lawfully on file with the Interstate Commerce Commission * * * relating to * * * switching, terminal service * * * also all other privileges, charges and rules applicable at shipping point or destination or in transit, which in any way change, increase or decrease or determine any part of the amount to be paid on any shipment between the points named herein, or which increase or decrease the value of the service to the shipper.

Respondent was one of the issuing carriers of the Lowrey tariff then in effect, and that tariff provided that, on carload traffic interchanged within the Chicago switching district between issuing and participating carriers, Chicago rates should be applied "when rate from or to Chicago, Ill., is 3.5 cents per 100 pounds or higher and charges from or to Chicago, Ill., are \$21.00 per car or over." Respondent applied the \$1.12 rate on protestant's shipments to points in the Chicago District on other lines and absorbed the delivery charges of those lines until about October 1, 1921, when respondent took the position that such charges must be borne by the consignee.

Respondent contends that because its present rate of \$1.12 is, in terms, limited to apply to Wabash deliveries only, the applicable rates for joint-line deliveries are the sums of the rate of \$1.12 and the switching charges of delivering lines, which collectively exceed the rates proposed. It urges, therefore, that the suspended schedules would effect reductions. Protestant cited *Lucke & Co. v. Wabash R. R. Co.*, 39 I. C. C., 517, in support of its contention that the \$1.12 rate applies to all deliveries within the Chicago switching district. In that case we found that under the Lowrey tariff switching charges for joint-line deliveries should not have been assessed on shipments of brick to Chicago from Attica, Ind., over the Wabash, although the latter's line-haul tariff provided that the Wabash would "not absorb to exceed 20 cents per net ton of 2,000 pounds." We there said that—

While it may have been the intention of the Wabash to limit the absorption by it of switching charges from Chicago to Harvey [a point within the Chicago switching district] to an amount not in excess of 20 cents a ton, and to require shipper or consignee to pay the remainder of the switching charges, the tariff did not accomplish that purpose. * * * The limitation as to absorptions contained in the Wabash tariff can not be held to have affected the rate to be paid by the shipper or consignee as specified in the Wabash tariff in connection with the Lowrey tariff to which it referred.

But here there can be no doubt. The Wabash tariff under consideration specifically limits the application of the \$1.12 rate to Wabash deliveries. The limitation could hardly be more definite, and effec-

tually bars the use of Lowrey's tariff for the purpose of extending that rate to deliveries on other lines. Delivery charges of such lines must therefore be added to the \$1.12 rate.

Respondent states that the revenue accruing under a \$1.12 rate for the transportation of sand and gravel from protestant's plant to joint-line deliveries in the Chicago district is unremunerative because the switching charges of other carriers must be deducted. Protestant has no sidetrack connection with respondent's rails, but is served by the Grand Rapids & Indiana, whose switching charge of \$4 per car is absorbed by respondent under a reciprocal switching arrangement, there being another sand and gravel plant at Wolcottville served only by respondent. With a few connecting lines in Chicago respondent interchanges traffic directly, but in most cases intermediate switching by the Belt Railway of Chicago is required. The charge of the latter line, which respondent is required to absorb, at present is \$10.50 for the loaded and empty movement. Delivering lines, as a rule, charge 40 cents per ton for switching to industries in the Chicago district and as much as 70 cents per ton for team-track deliveries. On shipments moving over both belt line and delivering line respondent estimates that the total absorptions range from 69 cents per ton, or \$34.50 per 50-ton car, to 99 cents per ton, or \$49.50 per car, leaving to it for the line-haul rates between 13 and 43 cents per ton, yielding revenues from 0.9 to 3.2 mills per ton-mile and from \$6.50 to \$21.50 per car.

The following statement shows rates on sand and gravel from producing points in Indiana to the Chicago district, including those proposed by respondent from Wolcottville:

From—	Dis- tance.	Route.	Local rate.	Rates per net ton for delivery on other lines. ¹	
				To in- dustries.	At team track.
	<i>Miles.</i>		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Wolcottville.....	135	Wabash.....	98	126	140
Summit Grove.....	159	C. & E. I.....	98	112, 126	140
Covington.....	136	C. C. C. & St. L.....	98	98, 126	.....
Ginger Hill.....	122	N. Y. C.....	77	98	98
La Fayette.....	120	C. I. & L.....	98	112, 126	.....
Kickapoo.....	115	C. & E. I.....	77	98	98
Winona Lake.....	111	Penn.....	98	98	98
Michigan City.....	56	M. C.....	70	98, 110	98, 110
Valparaiso.....	46	N. Y. C. & St. L.....	70	98	98
McCool.....	44	B. & O.....	56, 70, 98	98	112
Willow Creek.....	38	M. C.....	70	98, 110	98, 110
Gary.....	31	Wabash.....	70	98	112
Liverpool.....	30	Penn.....	70	98	112
Clarke.....	24	Penn.....	70	98	112

¹ Where more than one rate is shown, the rate depends upon the particular delivery required.

The rates proposed are not unreasonably high in comparison with rates from other Indiana producing points to Chicago. Protestant
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states that if the rates under suspension are permitted to become effective it will be barred from the Chicago market, but practically all the plants with which it competes there have a substantial advantage in distance which respondent can not be required to equalize. We find that the schedules under suspension have been justified. Orders vacating the orders of suspension and discontinuing these proceedings will be entered.

No. 12094.

BLOEDEL-DONOVAN LUMBER MILLS ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ANN ARBOR
RAILROAD COMPANY, ET AL.

Submitted July 11, 1921. Decided March 18, 1922.

Following *West Coast Lumbermen's Asso. v. A. & W. Ry. Co.*, 44 I. C. C., 443, charges collected on cedar shingles, in carloads, from points in Oregon, Washington, and British Columbia to Chicago, Ill., St. Louis, Mo., and points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin found unreasonable to the extent that they exceeded charges at rate of 65 cents per 100 pounds. Reparation awarded against defendant carriers which engaged in the transportation within the United States.

William C. McCulloch and *Rogers MacVeagh* for complainants.

Thos. M. Woodward for director general, as agent.

F. M. Dudley, *A. J. Laughon*, *B. W. Scandrett*, and *J. N. Davis* for other defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

In *West Coast Lumbermen's Asso. v. A. & W. Ry. Co.*, 44 I. C. C., 443, decided April 24, 1917, a rate of 67 cents per 100 pounds for the transportation of cedar shingles, in carloads, from points in Oregon, Washington, and British Columbia, situated in what is known as the coast group, to Chicago, Ill., St. Louis, Mo., and points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin, was found unreasonable to the extent that it exceeded 65 cents. Reparation was awarded on shipments which moved on and after January 68 I. C. C.

15, 1916, and a rate of 65 cents was prescribed for the future, but upon application of the carriers the effective date of the order was postponed from time to time. On June 25, 1918, under General Order No. 28 of the Director General of Railroads, the 67-cent rate was increased to 72 cents, but was reduced to 70 cents on May 15, 1919. This reduced rate was based upon the 65-cent rate found reasonable plus the 5-cent increase provided for by General Order No. 28. On October 23, 1920, upon the petition of certain carriers, we entered a permissive order authorizing the carriers and the director general to refund to the basis of 65 cents in all instances in which the 67-cent rate was charged and to the basis of 70 cents in all instances in which the 72-cent rate was charged, but the refund was not made.

On December 29, 1920, the complaint in this case was filed by shippers of shingles in the Pacific Northwest not parties to the case cited, alleging that the rates charged on their shipments which moved from and to the points referred to subsequent to January 15, 1916, were unreasonable to the extent above indicated. In the complaint the Director General of Railroads, as agent, was made a party defendant, but it developed at the hearing that no reparation was sought on shipments that moved during Federal control.

Defendants offered no evidence. They contend that section 206 (f) of the transportation act, 1920, which provides that the period of Federal control shall be disregarded in computing the statutory period of limitation in claims to the commission for reparation for causes of action arising prior to Federal control, is inapplicable to claims that accrued more than two years prior to the passage of the transportation act. This contention is untenable. *Thomas Iron Co. v. Director General*, 57 I. C. C., 657.

The interstate commerce act, as amended February 28, 1920, applies to common carriers engaged in the transportation of property only in so far as such transportation takes place within the United States. Some of these shipments originated in Canada, and some of those originating in the United States may have moved partly in Canada. The rates assailed were joint rates. Under similar circumstances, in connection with shipments moved during the period of Federal control, we said that the charging of an unreasonable rate is a tort and that the parties to such a rate are jointly and severally liable for any resulting damage; and found that complainant was entitled to reparation from the Director General of Railroads, as agent. *International Nickel Co. v. Director General*, 66 I. C. C., 627, decided February 14, 1922.

Following *West Coast Lumbermen's Asso. v. A. & W. Ry. Co.*, *supra*, and upon this record, we find that the charges collected on the

shipments under consideration from Oregon, Washington, and British Columbia to these destinations, moved after January 15, 1916, and prior to Federal control, were unreasonable to the extent that they exceeded those which would have accrued at a rate of 65 cents per 100 pounds; that complainants made the shipments as described; that they have been damaged thereby in the amount of the difference between the charges paid and borne by them and those herein found reasonable; and that they are entitled to an award of reparation, with interest, from defendant common carriers which engaged in the transportation of these shipments within the United States. Upon receipt of statements prepared in accordance with Rule V of the Rules of Practice, accompanied by affidavits from the respective complainants in accordance with the stipulation made at the hearing, that they paid and bore the charges on the shipments at the rates herein found unreasonable, we will consider the entry of an order awarding reparation. Shipments barred by the statute after excluding the duration of Federal control should not be included in the statements filed under Rule V.

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No. 10128.
LUMBER CARLOAD MINIMA.

Submitted November 9, 1921. Decided March 27, 1922.

Upon further hearing, subsequent to the former report in 56 I. C. C., 318, cubical-capacity carload minima on pine, fir, hemlock, larch, and spruce lumber, and articles taking the same group rates, in closed cars, from North Pacific Coast and Inland Empire to eastern destinations found unreasonable. Reasonable carload minima prescribed for the future.

William C. McCulloch and *Rogers MacVeagh* for West Coast Lumbermen's Association; *Chas. E. Elmquist* and *Clapp & Macartney* for Western Pine Manufacturers Association; *Donald D. Conn* for Shevlin-Hixon Company, Brooks Scanlon Lumber Company, and J. Neils Lumber Company; *Nuel D. Belnap*, *John S. Burchmore*, and *Luther M. Walter* for Palmer Lumber & Manufacturing Company, R. T. Feltus Lumber Company, and Funck Lumber Company; *G. E. Carlson* for Bridal Veil Lumbering Company, Wind River Lumber Company, and Douglas Fir Lumber Company; and *F. G. Donaldson* for Willamette Valley Lumbermen's Association.

D. F. Lyons and *B. W. Scandrett* for transcontinental lines.

REPORT OF THE COMMISSION ON FURTHER HEARING.

DIVISION 2, COMMISSIONERS DANIELS, AITCHISON, ESCH, AND CAMPBELL.

AITCHISON, Commissioner:

Exceptions were filed to the report on further hearing proposed by the examiners, and the case was argued before us.

In the former report in this investigation, 56 I. C. C., 318, we found "that the practice of maintaining cubical-capacity minima in connection with the interstate rates on lumber and other forest products from the Pacific northwest and inland empire is indefensible and should be discontinued." Respondents failed to "make effective different and generally satisfactory carload minima" within the required time and further hearing was had.

This report will be confined to the determination of reasonable carload minima to be applied to interstate shipments in closed and roofed cars of lumber and other forest products from points of origin in Oregon, Washington, Idaho, and Montana, to points of destination designated in the transcontinental eastbound lumber

tariffs published by R. H. Countiss, agent. The present minima on lumber loaded in open-top equipment are apparently satisfactory to shippers and carriers. Throughout this report the expressions "cubical minima" and "cubical-capacity basis" will mean minimum weights graduated according to a scale of cubic capacities of cars. Reference to "flat" minima and "flat" basis will mean a single specified weight applicable to all cars regardless of length or cubical capacity. The term "standard" basis will mean the usual, or ordinary, loading basis as distinguished from special minima applicable only in connection with cars which are loaded to full visible capacity. The term "visible capacity" will be applied to the cars loaded to full visible space capacity as defined in the tariffs. The expression Group D will refer to the commodities specified in the tariffs mentioned as taking the Group-D basis of rates.

The history of the lumber carload minima and the changes therein which gave rise to this investigation may be detailed. Prior to 1906 the minima generally prevailing throughout this territory were graduated and ranged from 20,000 to 40,000 pounds, according to the lengths of cars and the kinds of lumber. In that year the carriers established minima for standard loading based on the cubical capacity of cars. These minima ranged from 31,000 to 60,000 pounds on pine, fir, hemlock, larch, and spruce lumber, and from 23,000 to 41,500 pounds on cedar lumber and shingles. The carriers retained minima for cars loaded to full visible capacity on a car-length basis, and made such minima from 6,000 to 10,000 pounds lower on pine than on fir. A complaint filed early in 1917 by the Western Pine Manufacturers Association sought a reduction in the basis for computing the standard minima from 20 pounds to 16 pounds per cubic foot. We there found that the minimum weights were not shown to be unreasonable. *Western Pine Mfrs.' Asso. v. C., I. & W. R. R. Co.*, 46 I. C. C., 650. On September 24, 1917, the carriers changed the minima for cars loaded to visible capacity to the cubical basis, and made them 80 per cent of the existing standard minima. The changes resulted in substantial increases. At the same time the carriers added a rule to the effect that they would not accept orders for cars of capacity less than 2,400 cubic feet, but that if furnished for their own convenience the published minima applicable to those cars would apply. These changes were assailed in *Feltus Lumber Co. v. G. N. Ry. Co.*, 51 I. C. C., 571, and in informal complaints which gave rise to this investigation, instituted in April, 1918.

In the *Feltus* case we reserved the question of the propriety of the cubical minima for determination in the present proceeding, but stated that the record therein disclosed little to commend and much to discredit the use of such minima for lumber. The above-mentioned rule, which operated to exclude the shipper from order-

ing equipment which the carriers reserved the right to tender, we found unreasonable, but we approved the withdrawal of cars of capacity less than 1,651 cubic feet from transcontinental lumber traffic. We further found that the rule, which provided for the furnishing at the carrier's convenience of larger cars than ordered, was unreasonable, in that it did not specify whether the standard or full visible capacity minimum should be protected, and in that it was impossible to say whether, if a car had been furnished of the capacity ordered, it would have been loaded to visible capacity. The increased minima applicable to cars loaded to visible capacity were not found unreasonable.

Following the *Feltus case*, the carriers changed their tariffs so as to provide that they would not accept orders for or furnish cars of a cubical capacity less than 2,100 cubic feet. The substitution rule was changed so as to protect the visible-capacity minimum of the car ordered when a larger car was furnished for the carrier's convenience.

The present minima are based primarily upon a scale of cubic-foot capacities of cars, beginning with cars of not over 2,100 cubic feet, and graduated for each additional 50 cubic feet up to 2,950 and over 2,950 cubic feet. The graduated scale of cubic capacities is used in connection with the standard or usual loading and also in connection with cars loaded to visible capacity. Under the standard basis the minima for pine, fir, hemlock, larch, and spruce lumber and articles specified in tariffs under Group D are graduated commencing with 42,500 pounds for cars not over 2,100 feet, and increasing 1,000 pounds per car for each additional 50 cubic feet up to 59,500 pounds for 2,950 cubic feet. The minimum is 60,000 pounds for cars over 2,950 cubic feet. These graduated minima are based upon an estimated average of 20 pounds of lumber per cubic foot of car space. The minima on shingles, cedar lumber, and articles named under Groups A and B in the tariffs are graduated for standard loading, and range from 29,000 pounds, for cars not over 2,100 feet to 41,500 pounds for cars over 2,950 cubic feet. For visible-capacity loading the minima are graduated in like manner and are approximately 80 per cent of the minima for standard loading.

RESPONDENTS' PROPOSAL.

Prior to the further hearing, respondents agreed with the West Coast Lumbermen's Association, whose members cut approximately 90 per cent of the lumber produced west of the Cascade Mountains, on minima for application to fir, hemlock, larch, and spruce lumber from the North Pacific coast. No agreement was reached with the Western Pine Manufacturers Association, which represents mills prin-

cipally engaged in cutting pine lumber in the Inland Empire, i. e., in Oregon and Washington east of the Cascade Mountains, Idaho, and western Montana, but at the hearing respondents proposed the same minima for application to pine, as well as the other woods named, moving from both North Pacific coast and Inland Empire points. This plan, hereinafter referred to as respondents' proposal, provides for pine, fir, larch, hemlock, spruce lumber, and articles taking Group-D rates, five graduated minima ranging from 40,000 to 60,000 pounds for cars of certain lengths for standard loading; and, by exceptions thereto, provides five lower graduated minima ranging from 34,000 to 50,000 pounds for cars of certain cubic capacity when loaded to visible capacity. The proposed plan is a combination of length and cubic bases, and is shown herewith:

When loaded in cars—	Minimum weights will be—	Exceptions to foregoing minimum weights.
34 feet and under in length, inside measurement.	40,000 pounds...	Cars of less than 2,000 cubic feet capacity when loaded full (see rule) will be subject to charges based on actual weight but not less than 34,000 pounds.
Over 34 feet, not over 36.5 feet, inside measurement.	45,000 pounds...	Cars of less than 2,200 cubic feet capacity when loaded full (see rule) will be subject to charges based on actual weight but not less than 37,000 pounds.
Over 36.5 feet and under 40 feet in length, inside measurement.	48,000 pounds...	Cars of less than 2,400 cubic feet capacity when loaded full (see rule) will be subject to charges based on actual weight but not less than 40,000 pounds.
40 feet and under 42 feet, inside measurement.	55,000 pounds...	Cars of less than 2,700 cubic feet capacity when loaded full (see rule) will be subject to charges based on actual weight but not less than 48,000 pounds. Cars of a capacity of 2,700 cubic feet and over when loaded full (see rule) will be subject to charges based on actual weight but not less than 50,000 pounds.
42 feet and over in length, inside measurement.	60,000 pounds...	When loaded to full visible capacity (see rule) charges will be based on actual weight but not less than 50,000 pounds.

The respondents' proposal would result in reductions and increases in the minima for cars of certain sizes when loaded under the standard basis, and would result in increases ranging up to 8,000 pounds per car when loaded to visible capacity. Of the 33,364 cars of the Great Northern, the proposed plan would result in reductions of the present cubical-capacity minima for standard loading on 5,524 cars, no changes on 5 cars, and increases on 27,835 cars; and for visible-capacity loading, no changes on 3,243 cars and increases on 30,121 cars. The proposed minima will result in increases and only nominal reductions to the many shippers who load all of their cars, with but few exceptions, to visible capacity.

The application of the carriers' proposed car-length minima for standard loading, based upon past shipments, would result in the imposition of penalties in an unreasonably large percentage of cases. The word penalty is used herein to denote the extent to which the freight charges based upon the minimum weight exceed the charges based upon the actual weight of the shipment. Of some 1,244 cars of lumber shipped from North Pacific coast points on the Union Pacific system, penalties would have accrued on over 7 per cent, and

on upwards of 20 per cent of approximately 4,400 cars shipped from Inland Empire points over the lines of the Union Pacific system, the Northern Pacific, and the Great Northern. The record is clear that the minima proposed for standard loading can not stand by themselves without reference to the minima proposed for visible-capacity loading. It is admitted that the visible-capacity exceptions are proposed because cars of relatively small cubic capacity can not ordinarily be loaded to the proposed standard minima.

The visible-capacity exceptions are subject to several objections, and respondents agree that even if found not inconsistent with our previous condemnation of a cubical basis of minima, the exceptions would have to be modified. For example, if a shipper orders a 34-foot car and the car of that length furnished is of 2,000 cubic feet capacity and is loaded full, the minimum would be 40,000 pounds, whereas, if he orders a 36-foot car, and the car of that length furnished is of 2,199 cubic feet capacity and is loaded full, the minimum would be 37,000 pounds, or less than the minimum for the shorter car of smaller cubic capacity.

A further objection to the above visible-capacity exceptions is based upon a note thereto which provides that "agents will not accept orders which call for cars of a stated cubical capacity." It would be impossible for a shipper to know in advance what the minimum would be, and he could not prepare his shipment in advance. If he should order a 36-foot car the carrier might furnish a car of less than 2,200 cubic feet capacity, subject to a minimum of 37,000 pounds if loaded full, or a car of more than 2,200 cubic feet capacity, subject to a minimum of 45,000 pounds.

Witnesses stated that the carriers' plan would be more aggravating and drastic than the present rules, that it would be almost impossible to work under that plan without having the minimum dependent upon the cubic capacity of the car furnished, and that shippers would have to watch the lengths in addition to the cubic capacities of cars. Of the Great Northern's 33,364 cars, 29,127, or 87.3 per cent, have small cubic capacities which would bring them within the application of the visible-capacity exceptions. All of its 34-foot 4-inch and 36-foot cars would fall within the exceptions. All 22,421 of the Great Northern's 40-foot box cars have capacities of 2,689 cubic feet; the Union Pacific system's 40-foot cars, 2,720 to 3,370 cubic feet. A shipper served by the Great Northern system and furnished one of its 40-foot cars, would be subject to a minimum of 46,000 pounds if his car is loaded to visible capacity, while a shipper served by a parallel line of the Union Pacific system and furnished with one of its cars of exactly the same length, would be subject to a full visible-capacity minimum of 50,000 pounds.

The proposed visible-capacity exceptions, to the extent that they are dependent upon cubical capacity, are inconsistent with our expressions in the former report herein and the *Feltus case, supra*.

RESPONDENTS' ALTERNATIVE PROPOSAL.

Anticipating the possibility of such a finding, respondents proposed in their exceptions and at the argument had after rehearing, an alternative plan to which the West Coast Lumbermen's Association offered no objection. The alternative proposal carries the same standard minima and the same visible minima, the only difference being that the visible minima are applied to all cars of a given length instead of simply to the smaller cars of that length. The terms of this proposal are shown as follows:

When loaded in cars—	Standard mini- mum.	Loaded- full minimum.
	<i>Pounds.</i>	<i>Pounds.</i>
24 feet and under in length, inside measurement.....	40,000	34,000
Over 24, not over 26.5 feet in length, inside measurement.....	45,000	37,000
Over 26.5 and under 30 feet in length, inside measurement.....	48,000	40,000
30 and under 32 feet in length, inside measurement.....	55,000	46,000
32 feet and over in length, inside measurement.....	60,000	50,000

OTHER PROPOSALS.

The Western Pine Manufacturers Association and certain members of the West Coast Lumbermen's Association vigorously oppose the carriers' plan or any plan based in whole or in part upon cubical capacity or based upon five graduated lengths. They propose minima of 34,000 and 40,000 pounds based upon two lengths. The National Lumber Manufacturers Association at the first hearing in this case proposed the lower minimum of 34,000 pounds for cars under 36 feet in length. The Western Pine Association proposes the lower minimum for cars under 36 feet 6 inches in length; and the basis of its proposal is that 36 feet 6 inches is the standard-size car. They urge the adoption of not more than two basic minima, and are not so much concerned with the exact length on which the separation is made.

At the first argument respondents suggested that if we should adopt this proposal, the minimum of 34,000 pounds should be applied on cars 36 feet and under instead of under 36 feet, because 36-foot cars belong with the standard smaller cars; but they urged that the lower minimum should be 40,000 instead of 34,000 and the higher 50,000 instead of 40,000 pounds.

From 70 to 85 per cent of the lumber shipped from the Northwest is in 14 or 16 foot lengths. The predominating or standard length is 16 feet. Only two lengths of lumber can be loaded in the ordinary

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run of cars, which will range from 33 feet up to 42 feet. No more lumber of the same kind of 14-foot or 16-foot lengths can be loaded into a 40-foot car than into a 36-foot car of the same width and height. The heights of 36-foot and 40-foot cars are usually the same, although some 36-foot cars are higher than some 40-foot cars.

Practically, the shortest car into which three lengths of even 14-foot lumber could be loaded must exceed 42 feet in length. Cars long enough to contain three lengths of lumber may appropriately take minima higher than cars capable of loading but two lengths. The several exhibits which contain the details of over 8,000 shipments and of the equipment furnished therefor, disclose that cars over 42 feet in length constituted but from 1.1 per cent to 3.5 per cent of the cars included in such studies and averaged approximately 2 per cent.

The proposed graduation of minima for standard loading under five lengths is unsuitable for lumber. The five steps are not indicative of the amount of lumber that can ordinarily and reasonably be loaded into cars of the lengths specified; and they bear no positive relation to the actual loading possibilities of the available cars, which vary extremely in the ranges of cubic capacities for the many different lengths of cars. A 36-foot furniture car may contain a great deal more loading space than the average 40-foot car. The roofs of some of the cars are unusually low, considering their length. Some "freak cars," or cars of relatively small capacity, range from 34 to 50 feet in length.

Respondents' proposed plans of minimum weights are based to a considerable extent upon the result of a study conducted by the traffic manager of the West Coast Lumbermen's Association. His calculations were based on reports from 83 member mills, covering 8,987 cars of fir lumber shipped from points west of the Cascade Mountains from November 1, 1919, to February 29, 1920. The details of but 1,825 cars are of record, and are those on which penalties would have accrued under a preliminary proposal made by the carriers to the West Coast Association, which we are not asked to consider. We are therefore unable to determine the average loading of the 8,987 shipments as a whole or as classified into various lengths, nor what percentage of such shipments would have been penalized under the several proposals here presented. The conditions as a whole were such as to induce very heavy loading. The study was designed only to show the loading of fir from the North Pacific coast, and did not attempt to take into consideration the loading of Inland Empire mills.

The percentage of penalties under either proposal of respondents would be substantially greater from the Inland Empire than from the North Pacific coast. The difference is due primarily to the fact that fir lumber, being relatively somewhat more dense, loads more heavily

than pine. Fir shipments predominate from the coast, and pine from the Inland Empire. The latter district also produces a substantial percentage of red fir and some white fir. Relatively more green and rough lumber is shipped from the North Pacific coast than from the Inland Empire, but the coast mills are increasing their drying facilities.

The following tabulation of the average loadings of lumber from the North Pacific coast and Inland Empire is taken or computed from data of record:

Explanation and source of information.	Period of movement.	North Pacific Coast.		Inland Empire.	
		Number of cars.	Average load.	Number of cars.	Average load.
Carriers' Exhibit No. 1 (C., M. & St. P.).	Oct. 1, 1917, to Jan. 31, 1918.	1,821	<i>Pounds.</i> 60,423	1,270	<i>Pounds.</i> 52,344
Carriers' Exhibit No. 2 (N. P.)..	Nov. 1, 1917, to Mar. 1, 1918.	169	65,768	.....	.....
Do.....	Nov. 1, 1917, to Jan. 31, 1918.	.....	.....	413	57,557
Carriers' Exhibit No. 3 (O.-W. R. R. & N.).	Nov. 15, 1917, to Jan. 15, 1918.	147	65,716	690	54,810
Carriers' Exhibit No. 8 (O.-W. R. R. & N.).	Accounted for in interline reports for first six months of 1920. Some cars moved before Jan. 1, 1920	1,477	¹ 62,312	1,272	¹ 58,727
Carriers' Exhibit No. 9 (N. P.)..	.....do.....	.....	.....	1,372	¹ 55,060
Carriers' Exhibit No. 10 (G. N.).	.....do.....	.....	.....	1,769	¹ 55,468
Protestants' Exhibit No. 22	1918, 1919, and first 10 months 1920.	² 1,049	² 50,423	.....	.....
Protestants' Exhibit No. 32	March and June to September, inclusive, 1920.	.....	.....	1,025	53,540
Protestants' Exhibit No. 33 .....	.....do.....	.....	.....	1,176	54,554
Consecutively shipped open and closed cars of fir lumber.	1919.....	70,651	63,760	.....	.....

¹ Some of the cars included in these exhibits are included at minimum rather than actual weights, but their exclusion would result in higher averages.
² Over 71 per cent of the cars loaded were under 36 feet 6 inches in length and about 25 per cent of the loads were less than 36,000 pounds but over 34,000 pounds.

The figures given in the table and the testimony offered in connection therewith indicate that the average loadings of lumber from the North Pacific coast and Inland Empire approximate 60,000 pounds and 54,000 pounds, respectively.

Although the minima first agreed upon by the respondents and the West Coast Lumbermen's Association were based upon the loading of fir from the North Pacific coast, respondents think that the same minima are appropriate for application to pine and other woods from the Inland Empire as well, but state that they would have considered a proposal of lower minima from the Inland Empire. They suggest that, if it be decided that the Inland Empire should have lower minima than the North Pacific coast, they be made 90 per cent of those prescribed from the coast; and that the basis from each territory be applied to all woods named under Group D. Confusion and difficulty would result from the maintenance of differing minima on the different woods taking Group-D rates because of the practice of shipping mixed carloads. Respond-

ents emphasize the desirability of loading equipment to capacity because of the frequent shortages of equipment and the prevailing westbound movement of empty cars. While minima should be high enough to insure a proper utilization of equipment, they should not exceed what can be reasonably and generally loaded. Shippers can not be expected in all cases to fit their lumber to the great variety of cars that may be furnished them, when there is practically no equipment designed especially for lumber traffic. In fixing reasonable minima some leeway should be accorded for commercial conditions and the minima should not require the loading of all cars to their utmost capacity.

UNDUE PREJUDICE.

Under the present cubical-capacity minima, shippers of California redwood, with a flat minimum of 30,000 pounds on lumber, shippers of southern pine, with a minimum of 30,000 pounds to points south of the Ohio River and 34,000 pounds to points in central and eastern territories, and shippers from Wisconsin and the upper peninsula of Michigan, with a flat minimum of 34,000 pounds, have an advantage over the shippers from the Pacific Northwest in competitive territory. Certain of the latter state that this disadvantage should be removed by establishing from the Pacific Northwest minima no higher than those in effect from competing territories. Respondents admit that it would be unfair to some sections of the country to force minima upon them that justly could be applied from the North Pacific coast.

The question of what would be reasonable minima from these competing territories is not before us. They were not represented at the further hearing. The record does not enable us to determine what would be a proper relationship between the minima from the Pacific Northwest and from such competing territories. No expressions herein should be construed as authority for changes in the present minima from other territories than those specifically covered by our findings.

Upon this record we find that the present cubical-capacity minima are and for the future will be unreasonable; and that for the future the following minima will be reasonable for application to pine, fir, hemlock, larch, and spruce lumber and articles taking Group-D rates from points of origin in Oregon, Washington, Idaho, and Montana, to points of destination, designated in the transcontinental eastbound lumber tariffs published by R. H. Countiss, agent:

	Pounds.
For cars 36 feet and under in length.....	38, 000
For cars over 36 feet and not over 42 feet in length.....	44, 000
For cars over 42 feet in length.....	54, 000

subject to the following rules:

When cars are loaded to full visible capacity, charges will be based upon actual weight, not less than 30,000 pounds.

The term "loaded to full visible capacity" shall mean that the entire space capacity in the car up to within 1 foot of the bottom of the rafters shall be utilized to the fullest extent, and that no more lumber of ordinary lengths or other material of the character contained in the car can be loaded therein.

Exception: When cars are loaded with lumber or other material as provided above, the doorway space, if any, shall be considered neutral and the shipper may at his option fully or partially load short length commodities named in this tariff in such neutral doorway space without in any way affecting the meaning of the term "loaded to full visible capacity."

When it is impossible for carriers to furnish within six (6) days after receipt of order a car of the size ordered by the shipper and for convenience a car longer than that ordered by the shipper is furnished, the longer car may be used subject to the minimum weight named for the size of car ordered by the shipper (unless actual weight is greater, when actual weight will govern), except that when the car is loaded to full visible capacity, the actual weight, but not less than 30,000 pounds, will apply.

Little evidence was offered at the further hearing with respect to minimum weights on cedar lumber and cedar shingles, and the record is insufficient to enable us to prescribe minima thereon. The cubical-capacity basis of minimum weights is less objectionable to shingle shippers than to shippers of lumber, as the shape and size of the bundles of shingles ordinarily makes possible a more complete utilization of the loading space in a car than is the case with lumber. But the present and proposed cubical-capacity minima as applied to interstate shipments of lumber and lumber products from the Pacific Northwest and Inland Empire must be condemned here, as it was in our previous decision herein. Unless respondents within a reasonable time make effective, for application to shipments of cedar lumber and shingles from the North Pacific coast and Inland Empire, minima which shall be generally satisfactory and not inconsistent with our conclusions herein, the question may be brought to our attention for further consideration.

An appropriate order will be entered.

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No. 10011.
BIRMINGHAM TRAFFIC BUREAU
v.
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
DIRECTOR GENERAL, ET AL.

Submitted February 9, 1921. Decided March 14, 1922.

Upon complaint that the class and commodity rates from Memphis, Tenn., to Birmingham, Ala., are unreasonable and unduly prejudicial as compared with corresponding rates from Memphis to Nashville and Chattanooga, Tenn., and Atlanta, Ga., *found*:

1. That the commodity rates assailed were not and are not unreasonable.
2. That the class rates assailed are and for the future will be unreasonable and unduly prejudicial to the extent that they exceed the contemporaneous rates in the reverse direction.

O. L. Bunn for complainant.

Nelson W. Proctor and *Charles J. Rixey, jr.*, for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued. The conclusions proposed by him have been modified somewhat.

Complainant is a corporation representing shippers and receivers of freight at Birmingham, Ala. By complaint filed December 29, 1917, as amended, it alleges that the class and commodity rates maintained by defendants on all traffic moving from and through Memphis, Tenn., to Birmingham are unreasonable and unduly prejudicial to Birmingham, unduly preferential of Nashville and Chattanooga, Tenn., and Atlanta, Ga., and in violation of the long-and-short-haul provisions of the fourth section of the interstate commerce act. We are asked to establish just and reasonable rates and to award reparation to certain of complainant's members on shipments of cotton seed, cottonseed hulls, grain, and grain products, moving after December 28, 1915.

This case was consolidated with No. 9516, *Southeastern Rate Adjustment*, a general investigation, which was discontinued February 10, 1920. The record in that proceeding was made available for consideration here.

The rates assailed were increased June 25, 1918, under General Order No. 28 of the Director General of Railroads. By supplemental

complaint filed after the hearing the director general was made a defendant. He answered, further hearing was waived, but, by stipulation, the President's certificate of the necessity for increased revenue to defray expenses of Federal control and operation was made a part of the record. Rates will be stated in amounts per 100 pounds and are those in effect at the time of hearing in February, 1918, unless otherwise specified.

The alleged violation of the long-and-short-haul provision of the fourth section of the act is based upon the fact that traffic may move from Memphis to Chattanooga through Birmingham at lower rates than apply from Memphis to Birmingham. The short-line distance from Memphis to Chattanooga is 310 miles over the Southern, and Birmingham is not directly intermediate over that route. The shortest available route over which Birmingham is intermediate is that of the St. Louis-San Francisco, hereinafter called the Frisco, to Birmingham, thence Alabama Great Southern to Chattanooga, a total distance of 394 miles, or more than 115 per cent of the short-line distance. The departures from the fourth section are protected by appropriate application which has not been passed upon. From Memphis to Nashville, Chattanooga, Atlanta, and Birmingham the distances are, respectively, 230, 310, 418, and 251 miles.

Since this complaint was filed important changes have taken place in the rate adjustment in the Southeast. In *Rates to and from Nashville*, 61 I. C. C., 308, we required the establishment of certain scales of class rates from and to important points in the Southeast, throughout a territory which includes that which is involved herein. The rates in that case were fixed primarily on the principle of distance and the carriers were directed to grade rates to intermediate points with relation to those therein prescribed, with due consideration to distance.

In the case cited we said that "where the transportation conditions affecting the movements in opposite directions between the same points are substantially similar there should be no material disparity in rates." We see no reason why the same rate should not apply in both directions between Birmingham and Memphis. This would also be in harmony with the intentions of the carriers as repeatedly expressed when dealing with the southeastern adjustment.

The relation of the commodity rates from Memphis to Birmingham, Nashville, Chattanooga, and Atlanta is not always the same as that of the class rates. In certain instances rates to Birmingham are the same as, or lower than, the rates to Chattanooga, and in a few cases are not higher than the rates to Nashville. In some instances there are commodity rates to Nashville, Chattanooga, or

Atlanta, but none to Birmingham. Defendants express a willingness to establish such commodity rates to Birmingham on the usual basis, if they are desired. The rates on sugar, asphalt, and many other commodities from Memphis to Birmingham were lower at the time of hearing than those in effect prior to 1888.

Special stress was laid by complainant on rates on cotton seed, and grain and grain products, from Memphis to Birmingham as compared with rates to Nashville and Atlanta. Defendants introduced numerous comparisons with commodity rates from and to points in the southeastern territory tending to show the reasonableness of the rates from Memphis to Birmingham. They contend that there has been little or no movement between Memphis and Birmingham of many of the commodities mentioned in the complaint. Because of the prevalence of the boll weevil in the cotton area in Alabama and Georgia, cottonseed-oil mills at Birmingham drew a large portion of their cotton seed from Memphis and points west of the Mississippi River through Memphis. No competition with Nashville was shown, and the record indicates that Chattanooga mills purchase only a small amount of cotton seed which moves from or through Memphis.

The record also indicates that much of the grain moving from Memphis to Birmingham on which reparation is sought is milled in transit at Birmingham and reshipped under the through rate from Memphis to final destination. No evidence was introduced by complainant tending to show the unreasonableness of this through rate, or the unreasonableness of commodity rates from Memphis to Birmingham, except a comparison with rates to Nashville, Chattanooga, and Atlanta. Defendants introduced numerous comparisons with rates between other southeastern and southwestern points, and rates prescribed by us tending to show the rates to Birmingham to be properly adjusted and not unreasonably high.

The history of the rates from Memphis to Nashville and to Chattanooga makes it clear that those rates have been influenced by water competition which has at times existed in the past. Defendants invoke the principle that subnormal water-competitive rates may not justly be used as standards of comparison by which to test the reasonableness of other rates from or to points where such competition does not exist.

The reparation issue has virtually been withdrawn by complainant.

We find that the commodity rates assailed were not and are not unreasonable, but that the class rates are and for the future will be unreasonable and unduly prejudicial to the extent that they exceed those contemporaneously in effect from Birmingham to Memphis.

An appropriate order will be entered.

No. 12117.

STEWART SAND COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted August 8, 1921. Decided March 18, 1922.

Charges on shipments of sand from Grinter, Kans., to points within the switching district of Kansas City, Mo., found unreasonable. Reparation awarded.

S. C. Bates for complainant.

Paul Y. Versen for Kansas City, Kaw Valley & Western Railway Company.

F. E. Andrews for other defendants.

S. W. Sawyer for Kansas City Terminal Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. Our conclusions differ from those recommended by him.

Complainant, a corporation, alleges by complaint filed January 3, 1921, that the charges on sand, in carloads, from its plant at Grinter, Kans., to points within the switching district of Kansas City, Mo., were and are unreasonable, unjustly discriminatory, and unduly preferential to the extent that the rates applied exceed 2.5 cents on shipments in carriers' equipment and 2 cents in shippers' equipment. Reparation on shipments made since August 26, 1920, and the establishment of reasonable rates for the future are sought. The rates on sand in private equipment are uniformly 0.5 cent lower than in equipment furnished by the carriers, and only the latter will be here discussed. Rates are stated in cents per 100 pounds.

Grinter is a local station on the Kansas City, Kaw Valley & Western, an electric line hereinafter called the Kaw Valley, 3.8 miles outside the so-called Kansas City switching district. The Kaw Valley connects directly with but 3 of the 15 carriers serving that district, namely, the Rock Island, the Kansas City Southern, and the Kansas City Terminal, hereinafter referred to as the Terminal.

The services of an intermediate line are therefore necessary in order to effect deliveries at many points within the switching district. The stock of the Terminal is owned by the 12 trunk lines entering Kansas City. It will be here considered a typical intermediate carrier.

In *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.*, 55 I. C. C., 683, we found that the rates on sand, in carloads, from a plant near Turner, Kans., to destinations within the switching district of Kansas City, were unreasonable to the extent that they exceeded 2 cents and relatively unjust and unreasonable to the extent that they exceeded the rates from Sirridge, Kans. The Turner plant is on the south side of the Kaw River, about 4,380 feet northwest of Turner, a station on the main line of the Santa Fe, and 1.64 miles outside the switching limits of Kansas City. Complainant also operates a plant at Sirridge on the north bank of the river opposite the Turner plant and within the switching limits of Kansas City. The Grinter plant is west of Sirridge. A competing plant is located at Muncie, Kans., on the Union Pacific about 1 mile east of Grinter.

Following our decision in the case cited a uniform rate of 2 cents was published to points in the switching district from sand-producing points on the Kaw River, including Turner and Muncie. While that case was pending the Grinter plant was opened and the Kaw Valley voluntarily published therefrom to points in the switching district a rate of 2 cents, but limited its absorption of connecting lines' switching charges to \$8 per car. This amount was sufficient in most instances to put the complainant on a parity with its competitors at Muncie and Turner. To a few points, however, the amount of the absorption did not cover the entire switching charges of the intermediate and delivery lines and the excess was paid by complainant. Following the general increase of 1920 the rate from Grinter and other Kaw River points was increased to 2.5 cents.

Under General Order No. 28 of the Director General of Railroads, the switching rates of the Terminal on shipments requiring a line-haul movement were not increased but an increase was made in its rates for "cross-town" switching. Under the general increase of 1920, an increase of 35 per cent was made in the switching charges of the Terminal, both cross town and interchange, and on January 1, 1921, the charges on the latter were still further increased in amounts ranging from \$1.50 to \$2.50 per car so as to subject that traffic to increases such as were accorded cross-town traffic under General Order No. 28 and the increase of 1920.

The Kaw Valley in the meantime had not increased its maximum absorption, and where the connecting lines' switching charges

amounted to more than \$8 per car, the excess, which at the time the complaint was filed ranged from \$1.50 to \$16 per car, was charged against and paid by the shipper. In an effort to remedy the disadvantage under which the complainant was operating, the Kaw Valley canceled, effective February 20, 1921, the provision limiting its absorption to \$8 and now provides that it will absorb connecting lines' switching charges subject to a minimum revenue to it of \$15 per car. With respect to the future, the complaint, therefore, with one or two exceptions, covers only destinations necessitating the services of an intermediate switching carrier and is further limited to stations where the Kaw Valley would not receive a minimum revenue of \$15 per car if the entire switching charges were absorbed by it. While the existing arrangement places complainant on an equality with its competitors on the more important movements, it still leaves a number of points in the Kansas City district to which the charges from Grinter are in excess of those from competing points.

The situation complained of was brought about by the increase in the Terminal's switching charges made on January 1, 1921, and the failure of the interested carriers to agree upon a basis for dividing the through rate. The Kaw Valley, while willing to publish a flat rate of 2.5 cents from Grinter, takes the position that further absorptions by it of connecting lines' switching charges will so reduce its revenue that in some instances it will receive less than it received prior to August 25, 1920, and in other cases an actual loss will result from handling the traffic. On shipments from Grinter the Kaw Valley assumes five days' per diem reclaim, or \$5 on each car delivered to the switching lines, while on shipments from Sirridge each line assumes its own car rental. The complaint really results from a dispute between the interested carriers in the matter of divisions, a question in which the complainant is not interested and one not involved on this record.

In *Kaw River Sand & Material Co. v. A., T. & S. F. Ry. Co.*, *supra*, we said, page 687:

Complainant urged and defendants agree that rates from Turner, as well as from other shipping points, should be made the same to deliveries within the Kansas City switching district regardless of the number of lines participating in the transportation.

The Kaw Valley, not under Federal control, voluntarily established from Grinter, subject to a maximum-absorption provision, the rates which were afterwards fixed by us as maximum reasonable rates from Turner. The rates prescribed from Turner were the rates suggested by the carriers then under Federal control as reason-

able from the Kaw River sand-producing points. Following the publication of these rates Muncie, Turner, and other Kaw River sand-producing points were on an equality and Grinter in most instances was on a parity with them. This relationship has not been disturbed except as to Grinter. No good reason has been shown for a disruption of the previously existing relationships. Grinter is less than a mile from Muncie and under a group arrangement should be included in the same group.

We find that the rates assailed were and are unreasonable to the extent that they exceeded or exceed 2.5 cents per 100 pounds in carriers' equipment and 2 cents per 100 pounds in shippers' equipment. We further find that complainant made shipments of sand on which it paid and bore the charges at the rates herein found unreasonable; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

An appropriate order will be entered.

68 I. C. C.

No. 12260.

LOEWENTHAL COMPANY ET AL.

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted August 6, 1921. Decided March 18, 1922.

Rates on scrap aluminum, in carloads, straight or mixed with other scrap metals, from points in Texas, Oklahoma, and Arkansas to Chicago, Ill., and St. Louis, Mo., found unreasonable. Measure of maximum reasonable rates prescribed.

J. E. Hart for complainants.

Royal McKenna for director general, as agent.

Robert N. Nash for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

The complainants are Loewenthal Company and the Waste Material Dealers' Association of Texas, corporations. By complaint filed February 14, 1921, they allege that the rates applicable on scrap aluminum, in carloads, straight or mixed with other scrap metals, from points in Texas, Oklahoma, and Arkansas to Chicago, Ill., and St. Louis, Mo., were and are unreasonable, unjustly discriminatory, and unduly prejudicial. The prayer is for reparation on shipments which moved during the period beginning one year prior to Federal control and ending on the date of the complaint, January 6, 1921, and for establishment of reasonable rates for the future. Rates will be stated in cents per 100 pounds.

Defendants publish commodity rates applicable from practically all points in the territory of origin to Chicago and St. Louis on straight or mixed carloads of junk and scrap metals, including scrap tin, brass, Babbitt metal, and copper, but not scrap aluminum, which generally moves from and to these points under class rates governed by the western classification. On aluminum scrap, in carloads, fourth-class rates, minimum 30,000 pounds, apply. On less than carloads the applicable rates are first class when the commodity is

packed in bags, and second class when in barrels, boxes, bundles, or crates.

Dealers in junk generally make carload shipments containing a mixture of junk and several of the scrap metals. Scrap aluminum is sometimes included. In such cases the weight of the scrap aluminum is shown in the billing and less-than-carload class rates are charged thereon, the remainder of the shipment moving at the lower carload commodity rates. Complainants seek extension of the same carload commodity basis of rates to shipments of scrap aluminum in carloads, whether straight or mixed with the other scrap metals named. No attack is made against the less-than-carload rate as applied to shipments of scrap aluminum not made in a car containing a mixture of these other scrap metals.

As illustrative of the difference between the less-than-carload rates applicable on scrap aluminum in bags, and the rate applicable on straight or mixed carloads of the other scrap metals, the present rates from representative points in the territory of origin to Chicago and St. Louis are shown:

From—	To—	Carload minimum.	Rates on scrap brass, Babbitt metal, tin, and copper.	First-class rates on scrap aluminum.
		<i>Pounds.</i>	<i>Cents.</i>	<i>Cents.</i>
Dallas, Tex.	Chicago.....	30,000	83	282
Do.....	St. Louis.....	30,000	73	248.5
Oklahoma City, Okla.	Chicago.....	30,000	76.5	253
Do.....	St. Louis.....	30,000	67.5	219.5
Fort Smith, Ark.....	Chicago.....	40,000	58	226.5
Do.....	St. Louis.....	40,000	48	192.5

Scrap aluminum moves from Denver, Colo., and almost all points in the Mountain-Pacific group to St. Louis and Chicago at rates applicable on junk and scrap metals, including scrap copper, brass, tin, Babbitt metal, and, in some items, scrap pewter. Generally speaking, the minimum weight applicable from that group is 50,000 pounds, although from some stations on the Atchison, Topeka & Santa Fe, in the State of New Mexico, and from Billings and Great Falls, Mont., the applicable minimum is 30,000 pounds, and from Denver and other Colorado points 36,000 pounds.

The value of scrap aluminum is between 10 and 11 cents per pound. Complainants contend that the rates applicable on this traffic are prohibitive, and that they are unable to make shipments. They also state that, due to the rate disadvantage, they are unable to compete with shippers from the Mountain-Pacific group.

Defendants explain that prior to the issuance of the consolidated classification, effective December 30, 1919, an item of junk, including

high-grade scrap metals, such as brass, copper, tin, and aluminum, was carried in the western classification and rated class B, in carloads. Junk items were eliminated from the consolidated classification because of our recommendations in *Consolidated Classification case*, 54 I. C. C., 1, 55, and various ratings were given to the different scrap metals. Thus, scrap aluminum, in less than carloads, is rated first or second class according to the method of packing, as above explained; scrap copper and brass are rated second or third class, and scrap tin third class. Commodity rates were established to take the place of the junk item in the former classification, and defendants state that in constructing these commodity rates they undertook to follow generally the classification "arrangement." The principal reason for excluding aluminum from the scrap metals carried in the junk item was because of its lighter loading and greater value.

The evidence shows that scrap tin is more valuable than scrap aluminum, and that scrap copper is only 2 or 3 cents per pound less valuable than aluminum. Many of the defendants are parties to the commodity tariffs above referred to, covering points of origin in the Mountain-Pacific group, which contain junk items including scrap aluminum along with scrap brass, copper, tin, and other high-grade metals.

In *Radinsky v. C., B. & Q. R. R. Co.*, 55 I. C. C., 199, rates on mixed carloads of junk and scrap metals, including scrap copper, brass, and aluminum, from Denver to Chicago, and from and to other points, were considered. When shipped from Denver to Chicago a commodity rate of 67 cents applied on the junk and scrap-metal mixture, exclusive of the aluminum. On the quantity of scrap aluminum included in the mixture the first-class rate of \$1.80 applied. We found that the rates on the entire mixture of junk and scrap metals, including the scrap copper, brass, and aluminum, were unreasonable to the extent that they exceeded 60 cents, minimum, 36,000 pounds.

We find that the rates on scrap aluminum in straight carloads, or when mixed with other scrap metals, including scrap brass, copper, and tin, from points in Texas, Oklahoma, and Arkansas to Chicago and St. Louis are, and for the future will be, unreasonable to the extent that they exceeded or exceed the rates contemporaneously applicable on straight or mixed carloads of scrap copper, brass, and tin.

Complainant Loewenthal Company makes no claim for reparation, and no evidence was offered concerning any shipments made by the members of the other complainant under the rates assailed. No reparation will, therefore, be awarded.

An appropriate order will be entered.

68 I. C. C.

No. 12325.¹

WASATCH COAL COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT.

Submitted September 12, 1921. Decided March 18, 1922.

Upon defendants' motions to dismiss complaints assailing certain intrastate rates exacted during Federal control as unreasonable and otherwise unlawful because of failure to specifically allege violations of the acts which we administer, *Found*: That these complaints sufficiently and fairly present for our consideration and determination alleged violations of Federal laws which we have jurisdiction to administer, and cases set for further hearing.

Baldwin Robertson and Ball, Musser & Robertson for complainants in Nos. 12325 and 12328; and *E. R. Raumaker* for complainants in Nos. 12364 and 12391.

J. G. McMurry for director general; and *J. P. Bullard, J. C. Forrest, Boyle & Pickett*, and *B. F. Saggerson* for defendants in Nos. 12364 and 12391.

D. R. Johnson for Arizona Corporation Commission, intervener in Nos. 12364 and 12391.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

The complaints were filed during February, 1921, and thus within one year after the termination of Federal control. Those in Nos. 12364 and 12391 were set for hearing at Douglas, Ariz., May 5, 1921; those in Nos. 12325 and 12328 were set for hearing at Salt Lake City, Utah, May 23, 1921.

In No. 12325 complainants allege that the rates charged them for the transportation of bituminous coal, in carloads, shipped between January 13, 1919, and February 28, 1920, inclusive, from Standardville, Cameron, Raines, and Sunnyside, Utah, to Salt Lake City, were "unjust, unreasonable, unlawful, discriminatory, unduly preferen-

¹ This report also embraces No. 12328, *Jeremy Fuel & Grain Company et al. v. Director General, as Agent*; No. 12364, *Southern Arizona Traffic Association et al. v. Director General, as Agent, et al.*; and No. 12391, *Same v. Same*.

tial and unduly and unreasonably prejudicial, and in violation of the laws of the State of Utah."

The complainants in No. 12328 allege that the rates charged them for the transportation of coal, in carloads, shipped between December 31, 1917, and February 15, 1918, inclusive, from various points in Utah to Salt Lake City and Midvale, Utah, "were excessive and unjust and unreasonable, in violation of Section 4783 Compiled Laws of Utah, 1917." They specifically allege that certain rates were "unlawful, unjust, unreasonable, unjustly discriminatory, and unduly and unreasonably prejudicial, in violation of the Public Utilities Act of Utah."

Complainants in No. 12364 allege that the rates charged them for the transportation of cereals, cereal products, and hay, in carloads, shipped since March 1, 1916, from and to points in Arizona, were, "when exacted, unjust, unreasonable, unjustly discriminatory, unlawful and in violation of the Constitution of the State of Arizona."

Complainants in No. 12391 allege that the rates charged them for the transportation of hay, in carloads, shipped since March 1, 1916, from and to points in Arizona, were, "when exacted and still are, unjust, unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the Constitution of the State of Arizona and the Arizona Statutes."

At the hearing at Douglas counsel for defendants moved to dismiss the complaints in Nos. 12364 and 12391 for failure to allege violation of any acts administered by us. In the other cases counsel for defendant took the position that the complaints did not state a cause of action. Counsel for all defendants in all four cases urge that the failure to specifically allege a violation of any of the acts which we administer makes the complaints fatally defective; that they are insufficient to stay the statute of limitations; and that hence they may not be amended. No evidence was introduced upon the merits of complainants' allegations.

Opportunity was given counsel for the parties to file briefs on or before July 15, 1921, dealing with two questions: (1) whether the complaints as filed during February, 1921, constitute a filing within the meaning of section 206 (c) of the transportation act, 1920; and (2) what action we should take upon the motions to dismiss. Counsel for complainants in Nos. 12325 and 12328 filed a brief accompanied by amended complaints alleging violations of the acts we administer. No other briefs were received.

In Nos. 12364 and 12391 formal demand was made by defendants upon complainants to comply with Rule III (p) of our Rules of Practice, which requires definiteness in complaints asking recovery of damages.

The fact that these complaints were filed with us is not without significance in determining the question whether they invoke our jurisdiction under acts of Congress. We must look to the substance of a complaint rather than to its form. One of the essential elements of a complaint before us is allegation of violation of a law which we have jurisdiction to administer. In the complaints filed in these proceedings complainants allege that the intrastate rates therein described were unjust, unreasonable, unjustly discriminatory, and unduly prejudicial; and pray for reparation. Section 206 (c) of the transportation act, 1920, confers upon us jurisdiction to hear and decide complaints of this character arising during the period of Federal control. In *Williams v. United States*, 168 U. S., 382, the United States Supreme Court said, page 389:

We must look to the indictment itself, and if it properly charges an offence under the laws of the United States, that is sufficient to sustain it, although the representative of the United States may have supposed that the offence charged was covered by a different statute.

The further allegations that the rates assailed were in violation of laws of the States of Utah and Arizona may be treated as surplusage. *Farley v. United States*, 269 Fed., 721.

We are of opinion and find that these complaints sufficiently and fairly present for our consideration and determination alleged violations of Federal laws which we have jurisdiction to administer. The cases will be set for further hearing to receive evidence regarding the rates assailed in so far as such rates were collected on shipments made during the period of Federal control.

68 I. C. C.

No. 12363.

PROCTER & GAMBLE COMPANY

v.

APALACHICOLA NORTHERN RAILROAD COMPANY
ET AL.

Submitted January 25, 1922. Decided March 18, 1922.

Present rate on fish oil, in carloads, from Port St. Joe, Fla., to Ivorydale, Ohio, found not unreasonable. Combination of class rates, formerly effective, found unreasonable, and reparation awarded on shipments moving thereunder.

Hugo Ignatius for complainant.

F. W. Gwathmey for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

Exceptions were filed by complainants and defendants to the report proposed by the examiner, and the case was orally argued before us.

Complainant, a corporation, by complaint filed February 19, 1921, alleges that the rates charged on 27 carloads of fish oil shipped from Port St. Joe, Fla., to Ivorydale, Ohio, a point within the Cincinnati, Ohio, switching district, during the period from June to November, 1920, inclusive, were unreasonable. We are asked to prescribe a reasonable rate for the future and to award reparation. Rates will be stated in amounts per 100 pounds.

The applicable rates, which were charged on the shipments, were \$1.29 prior to August 26, 1920, \$1.615 from August 26 to October 12, 1920, inclusive, and 80 cents thereafter. The rate of \$1.29 was a combination rate made up of the Apalachicola Northern's sixth-class rate of 44 cents from Port St. Joe to River Junction, Fla., and connecting carriers' joint sixth-class rate of 85 cents beyond. The components of this combination rate were increased in accordance with the general increases of 1920, resulting in the rate of \$1.615. The rate of 80 cents, which became effective October 13, 1920, and which is still in effect, is a joint commodity rate. The shipments moved over the Apalachicola Northern from Port St. Joe to River Junction and lines of other defendants beyond. The distance from Port St.

Joe to River Junction is 102 miles. The short-line distance from River Junction to Cincinnati is 803 miles.

Complainant seeks a rate of 66 cents for the future and reparation to that basis on shipments which moved subsequent to August 25, 1920. On shipments made prior to that date it seeks reparation to the basis of a rate of 53 cents. The rates sought would produce ton-mile earnings of 1.17 and 1.46 cents, respectively.

Complainant compares the rates attacked, and the ton-mile earnings thereunder, with contemporaneous rates and earnings from other fish-oil producing points, as set forth in the table below:

To Ivorydale from—	Distance.	Rates prior to Aug. 26, 1920.	Ton-mile earnings.	Rates on and after Aug. 26, 1920.	Ton-mile earnings.
	Miles.		Cents.		Cents.
St. Joe, Fla.....	905	\$1. 29	2. 85	\$1. 615	3. 57
St. Marys, Ga.....	800	. 49	1. 225	. 80	1. 76
New York, N. Y.....	735	. 325	. 884	. 615	1. 53
Lewes, Del.....	788	. 325	. 825	. 455	1. 23
Franklin City, Va.....	828	. 325	. 785	. 465	1. 18
Fernandina, Fla.....	814	. 49	1. 2	. 465	1. 12
Baltimore, Md.....	567	. 295	1. 04	. 615	1. 51
Bayway, N. J.....	726	. 325	. 895	. 425	1. 49
Amagansett, N. Y.....	840	. 375	. 893	. 455	1. 25
Boston, Mass.....	942	. 325	. 69	. 525	1. 25
Waldwood, N. J.....	739	. 375	1. 014	. 455	. 96
Sabine, Tex.....	1,052	.....	.....	. 535	1. 59
				. 685	1. 81

Other exhibits submitted by complainant compare the ton-mile earnings on the rates assailed with the like yield returned by contemporaneous rates on tallow, grease, soap stock, and vegetable oils from various southern points to Ohio River and Mississippi River crossings and to points in central and trunk-line territories. Similar comparisons were also made with rates on canned goods, scrap iron, and other unrelated commodities. From these comparisons complainant argues that the rate from Port St. Joe should not exceed the basis suggested by it.

The commodity rate of 80 cents was constructed by theoretically applying from River Junction, Fla., the sixth-class rate of 49 cents in effect prior to August 26, 1920, from Pensacola, Fla., and New Orleans, La., to Cincinnati, and adding thereto 15 cents to cover the haul of the Apalachicola Northern. The amount so arrived at was then increased in accordance with the general increases of 1920. Defendants call attention to the fact that the 49-cent rate from New Orleans and Pensacola was lower than the contemporaneous sixth-class rates from intermediate points, such as Tuscaloosa and Montgomery, Ala., Hattiesburg, Jackson, and Meridian, Miss. They contend that the basis adopted in constructing the rate from Port St. Joe gives to that point a very favorable adjustment. The sixth-class

rates from Pensacola and New Orleans were increased on January 13, 1921, to 83 cents. As justifying the amount added to cover the haul of the Apalachicola Northern, it was testified that operating costs on this road are high and its traffic sparse. The Apalachicola Northern handles no traffic except such as originates at or is destined to points on its line. Its revenues were not sufficient at the time of movement of these shipments to meet operating expenses.

Complainant objects to the basis adopted by the carriers in constructing the through rate, contending that the rate from New Orleans on grease, tallow, or vegetable oils preferably should have been taken as the basis to apply north of River Junction instead of the class rate. No relationship is shown between the rates from New Orleans, Pensacola, and River Junction to warrant us in finding that the defendants adopted an unreasonable basis in constructing the through rate. Complainant also relies upon our decision in *Fish Oil from St. Marys*, 60 I. C. C., 511, as evidence that the 80-cent rate is unreasonable. This conclusion can not be deduced from our report in that case, which shows that the proposed increases in the rates from St. Marys grew out of a controversy over divisions and that to have allowed these increases would have destroyed the existing relationship between St. Marys and Fernandina, Fla., to the undue prejudice of the former.

The shipments in question commenced to move on June 7, 1920, but it was not until nearly a month later that the shippers asked defendants to establish a lower rate. There had been no fish oil shipped from Port St. Joe prior to these shipments nor has there been any movement since, though the evidence indicates that the discontinuance of operations of the plant at Port St. Joe is only temporary. Based on these facts defendants argue that no reparation should be awarded on the shipments which moved prior to the establishment of the commodity rate or at least prior to the request for the establishment of such a rate. They cite *Jennings-Jarrett Co. v. Director General*, 59 I. C. C., 93; *Midland Refining Co. v. Director General*, 60 I. C. C., 125, and cases of a similar character. No satisfactory explanation was given for the delay in establishing the 80-cent rate after complainant's request for a lower rate. Moreover, if the rate charged was unreasonable, and we are of that opinion in this case, the absence of a request for a reduction in the rate prior to the commencement of the movement is immaterial. *American Agricultural Chemical Co. v. Director General*, 66 I. C. C., 277.

We find that the present rate from Port St. Joe to Ivorydale is not unreasonable, but that the rates charged on complainant's shipments which moved prior to October 13, 1920, were unreasonable to

the extent that they exceeded 64 cents prior to August 26, 1920, and 80 cents on and after that date; that complainant made the shipments as described and paid and bore the charges thereon at rates herein found to have been unreasonable; and that it is entitled to reparation in the amount of the difference between the rates paid and those herein found reasonable, with interest. Complainant should comply with Rule V of the Rules of Practice.

68 I. C. C.

No. 12562.

CARSTENS PACKING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CAMAS PRAIRIE
RAILROAD COMPANY, ET AL.

Submitted January 17, 1922. Decided March 18, 1922.

Rates on live stock, in carloads, from points in Montana, Utah, Idaho, California, Oregon, and Washington to Spokane and Tacoma, Wash., found not unreasonable. Complaint dismissed.

Jay W. McCune, S. J. Wettrick, and Rock Stoddard for complainant.

D. F. Lyons, L. B. da Ponte, and B. W. Scandrett for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

No exceptions were filed to the report proposed by the examiner, but the case was orally argued.

Complainant, a corporation engaged in the meat-packing business at Spokane and Tacoma, Wash., alleges that the rates charged by defendants for the transportation, between December 31, 1919, and March 20, 1921, of numerous carloads of live stock from points in Montana, Utah, Idaho, California, Oregon, and Washington to Spokane and Tacoma were unjust and unreasonable. Shipments which moved intrastate in Washington subsequent to the period of Federal control will not be considered. Reparation only is sought.

Prior to December 31, 1919, live-stock rates in the Northwest were published in amounts per car without regard to the weight of the live stock loaded in the cars. On the latter date, in order to secure greater uniformity in the live-stock rates, and to remove the incentive for overloading which had been the cause of numerous loss and damage claims, the director general canceled the "per car" rates and established rates in cents per 100 pounds. In making this change he used the prevailing rates in amounts per standard car of 36 feet 6 inches in length, inside measurement, and divided such rates by 24,000, 17,000, 25,500, 12,000, and 22,000 pounds to arrive at the rates in cents per 100 pounds on cattle, hogs in single-deck cars, hogs in double-deck cars, sheep in single-deck cars, and sheep

in double-deck cars, respectively. These weights were then published in the tariffs as carload minima except that on the Great Northern the minimum on cattle was made 22,000 pounds. Upon objection by shippers the director general, in February, 1920, instructed the carriers to revise the then existing rates as to cattle on the basis of 26,000 instead of 24,000 pounds. Before this instruction was complied with Federal control terminated. Subsequently the carriers in a reduced-rate application sought authority from us to change the rates to the former per-car basis. We approved the application July 27, 1920, and the rates on certain lines were restored to the former per-car basis December 1, 1920. By March 20, 1921, all lines had established rates on that basis. Complainant now seeks reparation on all shipments that moved while the rates in cents per 100 pounds were in effect.

It is complainant's contention that the weights used in computing the rate in cents per 100 pounds were arbitrary and that they were less than the actual average weight of the different kinds of live stock moving. In support of this contention it shows that of the shipments received during the calendar year 1920 on which rates were paid in cents per 100 pounds, the weights of 81 per cent of the cattle shipments, 76 per cent of the hog shipments in single-deck cars, and 74 per cent of the sheep shipments in double-deck cars, were in excess of the minima carried in the tariffs. All of the shipments of hogs in double-deck cars were in excess of the minima. The average weights per car for the different kinds of live stock during the year, including certain shipments moving on the per-car basis, were cattle, 25,258 pounds; hogs in single-deck cars, 17,291 pounds; hogs in double-deck cars, 25,689 pounds; sheep in double-deck cars, 22,744 pounds. There appears to have been no movement of sheep in single-deck cars.

Complainant bases its case solely upon the contention that the alleged arbitrary weights used by defendants in converting the rates from a per-car basis to one of cents per 100 pounds necessarily resulted in rates that were unreasonable.

As showing the reasonableness of the rates assailed defendants compare the earnings per car and per car-mile on lumber and grain with similar earnings on live stock moving from points in Idaho and Montana to Spokane and Tacoma. The earnings on the lumber and grain were substantially higher than those on live stock. While the transportation characteristics of these commodities are different, the rates cited tend to show that the charges assessed were not unreasonably high.

We find that the rates assailed are not unreasonable. The complaint will be dismissed.

No. 12430.

M. B. FARRIN LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI PACIFIC
RAILROAD COMPANY, ET AL.

Submitted January 26, 1922. Decided March 18, 1922.

Demurrage charges assessed at Chicago, Ill., on one carload of gum lumber shipped from Hugo, Ark., found to have been illegal. Reparation awarded.

Theodore Davis, C. A. New, J. V. Norman, and J. H. Townshend for complainant.

J. F. Finerty, Royal McKenna, and A. P. Humburg for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

Exceptions were filed by the Director General of Railroads, as agent, to the report proposed by the examiner, and the case was orally argued.

Complainant, a corporation engaged in the lumber business at Cincinnati, Ohio, alleges that demurrage charges of \$340, collected on a carload of gum lumber shipped July 23, 1918, from Hugo, Ark., to Chicago, Ill., were unreasonable, unjustly discriminatory, unduly prejudicial, and illegal. The measure of the demurrage charges as such is not under attack. We are asked to award reparation and to prescribe for the future just and reasonable rates, charges, regulations, and practices applying to carload shipments consigned to all points in the Chicago switching district.

This shipment was purchased by complainant from the Mississippi-Delta Planting Company at Hugo for shipment to the International Harvester Company at Deering station, Chicago. It was billed to Memphis, Tenn., "for reconsignment via I. C.," and on July 30 was reconsigned to "M. B. Farrin Lumber Co., Chicago, Ill.," the only routing shown on the bill of lading being "C. & N. W. delivery." On July 31 the complainant wrote the freight-claim agent of the Chicago & North Western, hereinafter called the North Western, at Chicago, inclosing the bill of lading, and on the same

date also notified the local freight agent of that line at Chicago to deliver the car upon arrival to the International Harvester Company at Deering, which company would pay the freight. The car arrived on the rails of the Illinois Central at Chicago on August 3, and from that date until September 19 the officials of the Illinois Central endeavored to locate the consignee. Complainant was advised by the Mississippi-Delta Planting Company on September 7 that the car was on hand at Chicago unclaimed. Complainant again took the matter up with the North Western, which was unable to locate the car on that line. On September 19, complainant, upon advice from the agent of the Illinois Central at Chicago that the car was on hand unclaimed, instructed him to make delivery to the International Harvester Company at Deering station. As that company was on the credit list of the Illinois Central and North Western the car was switched on September 20 to the Chicago & Western Indiana for delivery via the North Western to the consignee.

Complainant contends that from August 8 to September 19 the car was held on the tracks of the Illinois Central at a point intermediate to the billed destination, "C. & N. W. delivery," at which latter place alone demurrage charges could lawfully accrue.

Agent Lowrey's tariff, I. C. C., 37, in effect when this shipment moved, provided and subsequent issues now provide:

Carload freight for delivery on a terminal carrier within the Chicago District will not be delivered to a connecting carrier by the issuing carriers until all charges assessed in accordance with tariffs lawfully on file with the Interstate Commerce Commission or State Commissions are paid, or satisfactorily arranged for.

Notice that car is or will be held for charges, together with statement of such charges, will be sent by the issuing carrier to consignee; also to the agent of the terminal carrier at destination when such destination is located within the outer zone of the Chicago District, as defined in Note 2, page 9.

Notice of arrival of the shipment was sent by the Illinois Central to the complainant at Chicago, but inasmuch as it has no office there notice was not received. Complainant contends that the above tariff provision is unreasonable and discriminatory in that it does not also provide for notice to agent of terminal carrier at destination when the destination is within the inner zone of the Chicago district, in which Deering is located. The Illinois Central could not tell from the billing whether delivery was to be made at a point within the inner or outer zones. Had such a notice been sent to the North Western, the demurrage charges undoubtedly would not have accrued, as the freight charges had been satisfactorily arranged for with the North Western. *Schuh-Mason Lumber Co. v. M. & O. R. R. Co.*, 46 I. C. C., 365.

The shipment moved on a joint through rate of 27.5 cents from Hugo to Chicago, and the Illinois Central and North Western were parties to the tariff naming this rate. The obligation rested upon the Illinois Central to complete its contract under the bill of lading and make tender of the shipment to the switching line for delivery to the North Western. This it did not do, but failed to comply with the delivery requirements of the bill of lading which it accepted at Memphis or to make inquiry of the North Western for disposition orders.

In *Butterfield Co. v. N. O. & N. E. R. R. Co.*, 55 I. C. C., 741, 743, we said:

In several cases we have condemned the assessment of demurrage on shipments moving under joint rates and withheld from delivering lines parties to those rates, * * * The shipment was billed through from point of origin to the Missouri Pacific tracks. The carriers to St. Louis contracted to make the delivery specified in the bill of lading, and the assessment of demurrage charges at a point intermediate to the delivery point was unauthorized and unlawful.

We find that the demurrage charges assailed were unlawfully collected; that complainant paid and bore said charges; that it has been damaged in the amount thereof; and that it is entitled to reparation from the director general in the sum of \$340, with interest. The rule in the Lowrey tariff should provide for notice to the agent of the terminal carrier at destination when the destination of the shipment is within the inner zone of the Chicago district, as now provided with respect to the outer zone.

An appropriate order will be entered.

68 I. C. C.

No. 11960.

F. A. COCKE LIVE STOCK COMPANY ET AL.

v.

BEAUMONT, SOUR LAKE & WESTERN RAILWAY COMPANY, DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted July 5, 1921. Decided March 18, 1922.

Rates on horses and mules, in carloads, from Texas points to Natchez, Miss., found unreasonable and unduly prejudicial. Reparation awarded.

B. F. Martin for complainants.

James M. Chaney, C. E. Dunbar, jr., Harry McCall, F. B. Clark, George Thompson, and *Robert Thompson* for defendants.

John F. Finerty and *Alex M. Bull* for director general, as agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainants are individuals and firms engaged in buying and selling live stock at and near Natchez, Miss. By complaint, filed August 3, 1920, as amended, they allege that the rates charged for the transportation of 36 carloads of horses and mules from certain Texas points to Natchez between January 1, 1917, and December 31, 1919, were unreasonable and unduly prejudicial. The prayer is for reparation only. Rates will be stated in cents per 100 pounds.

These points of origin and other pertinent matters, including the contemporaneous rates under the Shreveport scale, to the basis of which reparation is asked, are shown in the following table of rates on horses and mules from Texas points to Natchez:

68 I. C. C.

From—	Dis- tance. ¹	Rate applicable.		Rate charged. ³	Rate under Shreve- port scale. ⁴
		Rate. ²	Period.		
	<i>Miles.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
Houston.....	354	72	After June 25, 1918, and prior to Feb. 15, 1919.	68.8	38
Fort Worth.....	420	56	.....do.....	80.2	40
North Fort Worth.....	420	52.1	After Feb. 15, 1919.....	58.6	40
Luling.....	509	86.3	.....do.....	88.8	42
San Antonio.....	565	77.5	Prior to June 25, 1918.....	57.5	36
Do.....	565	77.5	.....do.....	61.2	36
Do.....	565	89	After June 25, 1918, and prior to Feb. 15, 1919.	64.5	43
Do.....	565	89	.....do.....	70.9	43
Do.....	565	89	.....do.....	74.5	43
Do.....	565	83.9	After Feb. 15, 1919.....	57.5	43
Do.....	565	83.9	.....do.....	64.5	43
Do.....	565	83.9	.....do.....	75.8	43
Do.....	565	83.9	.....do.....	81.4	43
Do.....	565	65	.....do.....	73.1	43
Caesar.....	607	88	.....do.....	67.8	44.5
Hebronville.....	647	80	Prior to June 25, 1918.....	60	37.5
Del Rio.....	734	80	.....do.....	57.4	40.5
Do.....	734	98.5	After June 25, 1918, and prior to Feb. 15, 1919.	67	47.5
Marfa.....	911	85.7	Prior to June 25, 1918.....	67.5	46.5
El Paso.....	1,030	74.5	After June 25, 1918, and prior to Feb. 15, 1919.	75.8	55

¹ Short-line distances plus 20 constructive miles for Mississippi River transfer, as shown in complainants' exhibits.

² Baton Rouge, La., combination, unless otherwise noted. Where rates shown in this column are published in dollars per car, they have been reduced to their equivalent in cents per 100 pounds.

³ Apparently based on 25,000 pounds per car, but exact basis of charges is not shown.

⁴ Rates in this column based on joint-line hauls and rates prescribed in 48 I. C. C., 312, and 52 I. C. C., 558, and not on the rates as published by carriers. They differ from those shown by complainants in their reparation statement.

⁵ Shreveport combination.

⁶ New Orleans, La., combination.

⁷ New Orleans, La., combination, under Rule 5-B of Tariff Circular 18-A.

⁸ Includes 6 cents, arbitrary, Natchez over Shreveport, for distances over 750 miles.

⁹ Specific joint commodity rate.

In *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 41 I. C. C., 83, 111, decided July 7, 1916, hereinafter called the *Shreveport case*, we prescribed a reasonable maximum scale of distance rates on horses and mules between points in Texas and Shreveport, La., for single-line application, ranging from 10 cents for 10 miles or less to 43 cents for over 700 miles, with an arbitrary of 2.5 cents in addition, for joint-line hauls of 500 miles or less.

Upon rehearing in that proceeding, 48 I. C. C., 312, 351, we reduced the distance-scale rates on horses and mules approximately 1 cent per 100 pounds, the revised scale for single-line application ranging from 9 cents for 10 miles or less to 42 cents for distances over 750 miles. Joint-line rates were specifically prescribed, and represented differences ranging from 2.5 cents for 10 miles and less to 0.5 cent at 550 miles over those for corresponding distances prescribed for single-line application; over 550 miles they were the same as single-line rates. The minimum for cars 36 feet 7 inches in length, inside measurement, was reduced from 23,000 to 22,000 pounds. The revised scale is referred to as the Shreveport scale.

In *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, No. 8845, 52 I. C. C., 105, we said, at page 119, that "nothing of record establishes material difference in this general southwestern territory in the physical or transportation conditions in their relation to rate making"; and at page 122 that "Natchez to the full extent of the requirements of its traffic should be accorded commodity rates corresponding with those provided at other lower Mississippi River crossings, and such rates for like distances should not exceed rates between points within Louisiana on and west of the Mississippi River," with an allowance of 20 constructive miles from the west bank for the river transfer to Natchez and other crossings.

In *Natchez Chamber of Commerce v. A. H. T. Ry. Co.*, No. 9237, 52 I. C. C., 558, 571, we found, among other things, that—

the present rates on cattle, horses, and mules, in carloads, from Texas points to Natchez, for distances of 750 miles or less, are and for the future will be unduly prejudicial to the extent that they exceed or may exceed the rates for like distances contemporaneously in effect from Texas points to Shreveport; and that for distances greater than 750 miles they are and will be unduly prejudicial to the extent that they exceed or may exceed the rates from the same points to Shreveport by more than 6 cents per 100 pounds.

Provision was made for the addition of 20 constructive miles for river transfer. The maximum scale to Shreveport having been fixed in the *Shreveport case*, and rates not in excess of that scale having been ordered in the *Natchez case*, No. 9237, the carriers were without authority to charge or collect rates from Texas points to Natchez on horses and mules higher than rates under the Shreveport scale.

The original complaint in the *Natchez case*, No. 8237, was filed in October, 1916; all the shipments here under consideration moved after the hearing in that case, held February 17, 1917; and the decision was rendered March 25, 1919. On September 1, 1919, in compliance with the order as modified, rates were established on the basis of the Shreveport scale increased 25 per cent to correspond with the rate level authorized under General Order No. 28 of the Director General of Railroads, but in some respects slightly less than the maximum basis prescribed.

Complainants state that no changes in the conditions, existing as of January, 1917, have been shown; and that any testimony dealing with the unreasonableness of the rates assailed would have been a repetition of the testimony already before us in No. 9237 covering these identical rates. Defendants offered no evidence in the present proceeding, and did not attempt to show that the bases prescribed in the *Shreveport case* and *Natchez case* were or are less than reasonable maximum rates. Complainants state that the rates charged to Natchez were materially higher than the contempora-

neous rates to Vicksburg, Miss., and to Baton Rouge, La., points on the east bank of the Mississippi River north and south of Natchez, respectively; and complainants' counsel expressed the opinion that in many cases the through rates exceed the aggregate of intermediate rates.

Complainants compete with Shreveport dealers in the sale of horses and mules at Louisiana points in the district between Natchez and Shreveport, where a large percentage of the stock under consideration was disposed of; and, when prospective purchasers were cognizant of the differences in prices due to higher freight charges to Natchez, complainants lost sales, but the fact and amount of damages which complainants may have suffered by reason of the undue prejudice in freight rates are not proved with sufficient certainty to warrant an award of reparation solely upon that ground.

Defendants refer to the fact that there was no finding in the *Natchez case*, No. 9237, that the rates on horses and mules from Texas points to Natchez were unreasonable in and of themselves, and contend that the order was made solely for the purpose of removing the undue prejudice found to exist against Natchez. The allegation of unreasonableness *per se* was made by the complainant in that case and the absence of any specific finding upon that issue is explained by the fact that reasonable maximum rates had been prescribed in the *Shreveport case*, and the only additional finding necessary in the *Natchez case* was the order fixing the rates to Natchez not in excess of those prescribed to Shreveport for like distances.

Defendants contend that in cases where we have ordered a reduction in rates that had been in effect for a long time throughout a wide territory, we have been loath to award reparation, citing *Kansas Car-Lot Egg Shippers' Asso. v. B. & O. R. R. Co.*, 53 I. C. C., 59. The decision in that case prescribed, *de novo*, carload ratings on certain articles for which the existing classifications had theretofore provided any-quantity ratings only. The instant case deals with specific commodity rates to one destination.

Defendants also contend that if reparation be awarded in this proceeding it should not be allowed on shipments moving more than two years prior to the filing of the complaint; that the limitation provision of the act to regulate commerce not only barred the remedy on such shipments but terminated the liability, citing *Phillips v. Grand Trunk Ry.*, 236 U. S., 662; and that the liability, having been terminated, could not be revived by section 206 (f) of the transportation act, 1920, which eliminates the period of Federal control from the periods of limitation. We have found otherwise in a number of cases.

We find that the rates assailed for distances of 750 miles or less were unreasonable and unduly prejudicial to the extent that they exceeded the rates for like distances applicable under the distance scale of rates prescribed from Texas points to Shreveport in the *Shreveport case*, 48 I. C. C., 312, 351, and that for distances greater than 750 miles they were unreasonable and unduly prejudicial to the extent that they exceeded the rates prescribed in that case from the same points to Shreveport by more than 6 cents per 100 pounds, subject as of June 25, 1918, to the increases under General Order No. 28. Before applying the Shreveport scale an addition of 20 constructive miles shall be made to the distances to Natchez as an allowance to defendants to cover the cost of river transfer at that crossing.

We further find that shipments were made as described; that complainant F. A. Cocke paid and bore the charges on 24 shipments in his own name, bore the charges on three cars consigned by him to Jake Laub, and paid and bore the charges on one car consigned to Z. T. Miller, his agent; that complainant George W. Armstrong bore the charges on one car on which the charges were paid by F. A. Cocke for Armstrong's account; that F. A. Cocke paid the charges on two shipments consigned to complainant Townes & Walcovitch, a firm, and in which shipments F. A. Cocke owned a half interest and the charges were borne by them jointly; that complainant F. A. Cocke paid the charges on two shipments consigned to Ray Lum, in which shipments F. A. Cocke owned a half interest, and the charges were borne by them jointly; that complainant Ira Wilson paid and bore the charges on one shipment; that they have been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants who bore or paid and bore the charges according to their interest as shown above, should comply with Rule V of the Rules of Practice.

No. 11624.

EL PASO CHAMBER OF COMMERCE

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.

Submitted March 18, 1921. Decided March 18, 1922.

Rates applicable on apples, in carloads, from Chelan, Wash., to Dallas, Tex., there stored in transit, and thence forwarded to El Paso, Tex., found not unreasonable or unduly prejudicial. Complaint dismissed.

A. E. Norcap for complainant.

Robert Thompson for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

By complaint filed July 6, 1920, on behalf of Lyon & Company, a corporation engaged in the wholesale fruit and vegetable business at El Paso, Tex., hereinafter referred to as complainant, it is alleged that the rate of \$1.20 collected on four carloads of apples shipped in November and December, 1918, from Chelan, Wash., to Dallas, Tex., there stored, and in January and February, 1919, forwarded to El Paso, was unreasonable, unduly prejudicial, and in violation of section 4 of the interstate commerce act. We are asked to award reparation. Rates are stated in amounts per 100 pounds.

Chelan is a local point on the Great Northern in central Washington. One of the shipments was originally consigned to Billings, Mont., reconsigned to Amarillo, Tex., and further reconsigned to Dallas. It moved over the Great Northern to Billings; Chicago, Burlington & Quincy, hereinafter called the Burlington, to Denver, Colo.; Colorado & Southern and Fort Worth & Denver City to Fort Worth, Tex.; and Missouri, Kansas & Texas of Texas to Dallas. The other three shipments, one of which was reconsigned from Billings, moved over the Great Northern to Billings; Burlington to Kansas City, Mo.; and Missouri, Kansas & Texas to Dallas. Complainant purchased the apples while they were in storage at Dallas and forwarded them to El Paso, specifying Texas & Pacific routing.

Charges were collected at a combination rate of \$1.20, composed of the Group-H rate of \$1.10 to Alfalfa, Tex., 6 miles east of El Paso, and the local rate of 10 cents beyond, plus a storage-in-transit charge of 5 cents per 100 pounds, which is not assailed.

The Group-H rate of \$1.10 was applicable to El Paso, but was restricted to deliveries by the El Paso & Southwestern and the Rio Grande, El Paso & Santa Fe. On shipments to that point routed for delivery by the Galveston, Harrisburg & San Antonio or the Texas & Pacific, combination rates applied. The Group-H rate applied to Fort Bliss and Pancho, Tex., 5 and 12 miles, respectively, north of El Paso, on shipments moving over the Texas & Pacific or Galveston, Harrisburg & San Antonio to El Paso, and El Paso & Southwestern beyond. This departure from the long-and-short-haul provision of the fourth section was and is unauthorized and should be promptly removed.

Complainant seeks reparation to the basis of the Group-H rate. It compares the revenues per car-mile and per ton-mile under the combination rates assailed with earnings under the Group-H rate to Alfalfa and Fort Bliss, and under rates that contemporaneously applied from Chelan to New Orleans, La., Mobile and Montgomery, Ala., and Jacksonville, Fla. It shows that from representative points in Oregon, Wyoming, and Colorado, Agent Leland's tariffs carry the same rates on apples to El Paso for delivery by any of the lines serving that point; and that the rates from these points are lower to El Paso than to Alfalfa.

Defendants contend that the shipments did not fall within the scope of their transit rules; that the rate applicable was the combination on Dallas, composed of the Group-H joint rate of \$1.10 to Dallas and a rate of 49 cents beyond; and that the shipments were undercharged.

Under the western lines' storage-in-transit tariff, participated in by defendants, storage in transit of carload shipments of apples was permitted upon the basis of the through rate, plus 5 cents per 100 pounds for storage, provided "the storage point is directly intermediate between point of origin and final destination," and reshipment of the apples is made within one year from the date of their receipt at the storage point.

Defendants urge that Dallas is not directly intermediate between Chelan and El Paso. The meaning of a tariff is limited to the plain import of the language employed therein. The tariff carrying the through rate provided for routing over the Great Northern to Billings, and the Burlington, with further routing unrestricted. This permitted movement by the Burlington to Kansas City, via which

junction Dallas may be considered as directly intermediate between Chelan and El Paso. The fact that the distance over the Kansas City route is greater than over other routes is immaterial.

The shipment reconsigned to Amarillo and then to Dallas was not entitled to the through rate to Alfalfa, since Dallas is not directly intermediate to El Paso via Fort Worth. Had this shipment moved through Fort Worth into Dallas by way of the Texas & Pacific and been stored at a warehouse on the rails of that carrier it would have been entitled to the through rate under specific provision in the storage tariff, but the shipper, in order to obtain the benefit of this provision, should have indicated Texas & Pacific delivery at Dallas. Rules and regulations published in tariffs are as binding as published rates, and shippers are chargeable with knowledge of them. The combination rate of \$1.59, based on Dallas, previously referred to, was applicable on this shipment, resulting in an undercharge.

The restriction of the Group-H rate, Chelan to El Paso, to delivery by the El Paso & Southwestern and Rio Grande, El Paso & Santa Fe was due, no doubt, to the circuitry of the routes making delivery by the Galveston, Harrisburg & San Antonio and Texas & Pacific. The restriction is not unreasonable or unduly prejudicial. The approximate distances over the routes of movement were 3,166 miles by way of Denver and 3,188 miles by way of Kansas City. The approximate distances over the direct routes are 2,452 miles over the Great Northern to Billings, Burlington to Denver, Colorado & Southern and Fort Worth & Denver City to Dalhart, Tex., and Rock Island and El Paso & Southwestern beyond; and 2,472 miles over the Great Northern to Billings, Burlington to Denver, and Santa Fe beyond.

We find that the rates applicable were not unreasonable or unduly prejudicial.

The complaint will be dismissed.

68 L. C. 61.

No. 10683.

WAGNER & STEINER

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI PACIFIC
RAILROAD COMPANY, ET AL.

Submitted September 12, 1921. Decided March 18, 1922.

Rate charged on crude petroleum, in tank-car loads, from Mile Post 343, Ranger, Tex., to Fort Smith, Ark., found unreasonable. Reparation awarded.

Clifford Thorne, Walter R. Scott, and Alex. F. Weisberg for complainants.

John F. Finerty, Alex. M. Bull, James M. Chaney, and Henry G. Herbel for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by the Director General of Railroads, as agent, to the report proposed by the examiner.

Complainants are Warren Wagner and R. L. Steiner, formerly copartners trading as Wagner & Steiner and shipping crude petroleum from the so-called Ranger oil fields in Texas. Since the shipments were made Steiner has acquired Wagner's interest and the partnership has been dissolved. By complaint filed June 2, 1919, they allege that the rate charged on 11 tank-car loads of crude petroleum shipped between November 26 and 29, 1918, from Mile Post 343, Ranger, Tex., to Fort Smith, Ark., was unreasonable and unduly prejudicial. Reparation is sought. Rates will be stated in cents per 100 pounds.

Mile Post 343 is within the switching limits of Ranger, a local point on the Texas & Pacific about 95 miles west of Fort Worth, Tex. The shipments weighed 697,165 pounds. Nine moved over the Texas & Pacific to Texarkana, Ark.-Tex., and the Missouri Pacific beyond, 647 miles; and two over the Texas & Pacific to Fort Worth, the St. Louis Southwestern of Texas to Texarkana, and the Missouri Pacific beyond, 619 miles. The short-line distance is 387 miles over the Texas & Pacific to Fort Worth, Missouri, Kansas & Texas to Crowder, Okla., and Fort Smith & Western beyond. The bills of lading show

routing "T. & P.-Iron Mt." Charges of \$5,681.91 were collected at the applicable joint fifth-class rate of 81.5 cents. The applicable rate over the short line was 40.5 cents, composed of 8 cents to Fort Worth and 28 cents beyond, plus the increase of 4.5 cents established by the director general following General Order No. 28.

Approximately two months before the shipments moved representatives of the consignee had requested defendants to establish a commodity rate on crude petroleum from Ranger to Fort Smith. On November 6, 1918, defendants established a joint commodity rate of 25 cents from Ranger to refining points in Oklahoma with which the consignee at Fort Smith is said to compete. This rate was reduced to 23 cents on October 14, 1919. On December 6, 1918, a joint commodity rate of 25 cents was established from Ranger, including Mile Post 343, to Fort Smith, over all lines except the short line, which did not establish that rate until January 5, 1919. When the shipments moved there was in effect over the routes of movement a combination commodity rate of 37.5 cents, composed of 8 cents to Fort Worth and 25 cents beyond, plus the increase of 4.5 cents, or 44 cents less than the applicable class rate of 81.5 cents. This departure from the provisions of the fourth section was protected by an appropriate application.

The average distance from Ranger to a selected number of Oklahoma points to which the 25-cent rate applied is 394 miles. For distances comparable to those over the routes of movement, complainants refer to rates of 25.5 cents from Fort Worth to Memphis, Tenn., 726 miles, yielding 7.02 mills per ton-mile; 24.5 cents from the Kansas group to Chicago, Ill., 606 miles, yielding 8.09 mills; 24.5 cents from the Oklahoma group to Chicago, 704 miles, yielding 6.96 mills; 21.5 cents from Shreveport, La., to St. Louis, Mo., 567 miles, yielding 7.58 mills; and 24.5 cents from Ranger to New Orleans, La., 642 miles, yielding 7.63 mills. These are said to be the distances over the short lines controlling the rates, which are group rates. The rate charged on the shipments here considered earned 25.2 and 26.3 mills over the respective routes. The 25-cent rate would have yielded 7.73 and 8.08 mills for those routes. No substantial evidence of undue prejudice to complainants was adduced.

Defendants contend that the rate assailed was not unreasonable for application over the routes of movement. The volume of traffic from Ranger was comparatively light, but a substantial number of shipments have been made from Ranger to Fort Smith since the establishment of the 25-cent rate.

In *Western Petroleum Refiners Asso. v. Director General*, 66 I. C. C., 426, we found that 32.5 cents, plus the increase authorized in *Increased Rates*, 1920, 58 I. C. C., 220, would be a maximum reasonable
68 I. C. C.

rate for the future on crude petroleum from the Ranger group to St. Louis, Mo. The short-line distance from Ranger to St. Louis is 773 miles.

The shipments in controversy were sold by complainant f. o. b. Mile Post 343. Upon their arrival at Fort Smith, the consignee refused to accept them until the difference between the charges applicable and those that would have accrued at a rate of 25 cents was advanced by complainants.

We find that the rate charged was unreasonable to the extent that it exceeded 32.5 cents; that complainants made the shipments as described and paid and bore the charges thereon, and were damaged in the amount of the difference between the charges collected and those that would have accrued at the rate herein found reasonable; and that they or their lawful successor in interest are entitled to reparation in the sum of \$3,416.12, with interest.

An appropriate order will be entered.

68 I. C. C.

No. 11686.

AMERICAN PLATE GLASS COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA
RAILROAD COMPANY, ET AL.

Submitted August 9, 1921. Decided March 18, 1922.

Rate on sand, in carloads, from Irving, N. Y., to James City, Pa., found unreasonable. Reparation awarded.

Adrian Sizer and F. J. Woods for complainant.

Guernsey Orcutt for defendants other than Kane & Elk Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation manufacturing plate glass at James City, Pa. By complaint filed July 22, 1920, it alleges that the rate charged on 89 carloads of sand shipped from Irving, N. Y., to James City between February 22 and April 6, 1918, was unreasonable and in violation of the long-and-short-haul provision of section 4 of the interstate commerce act. We are asked to award reparation. Except as noted, rates are stated in cents per 100 pounds.

The shipments aggregated 7,415,230 pounds and moved, as routed, New York Central to Dunkirk, N. Y.; Dunkirk, Allegheny Valley & Pittsburgh, a New York Central line, to Warren, Pa.; Pennsylvania to Kane, Pa.; and Kane & Elk to James City, 102 miles. No rate was specified in the bills of lading. Complainant paid charges of \$9,195.69 at a commodity rate of 68 cents per net ton from Irving to Warren, 68 miles, and the sixth-class rate of 9 cents per 100 pounds from Warren to James City, 34 miles.

When these shipments moved a joint rate of 7.8 cents applied from Irving to James City over the New York Central to Erie, Pa., Pennsylvania to Kane, and the Kane & Elk beyond, 170 miles. When the first 88 cars moved an intrastate commodity rate of 57.8 cents per net ton applied from Warren to James City over the route of movement. This rate had been increased to 70 cents per net ton when the last car moved. It had been published from Althom, Pa.,

and an intermediate clause made it applicable on intrastate shipments from Warren. It was not applicable on interstate shipments through Warren and, as to these shipments, did not violate the fourth section.

The rate from Irving to James City via Erie was 7.5 cents on September 1, 1912, and became 7.8 cents on January 15, 1915, 9 cents on April 15, 1918, 10 cents on June 25, 1918, 7 cents on April 6, 1919, and 10 cents on August 26, 1920. It will be observed that these changes have resulted in a rate which is the same as that established by the director general in 1918 and that the general increase of 1920 has not been superimposed thereon. In other words, the present rate does not reflect both of these general increases.

The rate from Irving to Warren over the route of movement was 65 cents per net ton on March 16, 1912, and became 68 cents on October 26, 1914, 80 cents on May 2, 1918, \$1 on June 25, 1918, and \$1.40 on August 26, 1920. Complainant contends that the rate charged was unreasonable to the extent that it exceeded \$1.26 per net ton on the first 88 cars and \$1.38 per net ton on the last car, a combination of the commodity rate from Irving to Warren and the intrastate commodity rate from Warren to James City.

Defendants contend that the natural route for sand from Irving to James City was via Erie, and that complainant specified an unnatural route over which the carriers did not have joint rates and prorating arrangements. Distance alone considered, the route used was the natural one.

The rate charged yielded 24.3 mills per ton-mile and \$1.012 per car-mile. A rate of 7.8 cents would have yielded 15.3 mills per ton-mile and 63.7 cents per car-mile at the average weight of 83,300 pounds.

We find that the rate assailed was unreasonable to the extent that it exceeded 7.8 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$3,411.81, with interest.

An appropriate order will be entered.

68 I. C. C.

No. 12192.

STANDARD OIL COMPANY (CALIFORNIA)

- v.

DIRECTOR GENERAL, AS AGENT, PITTSBURGH & LAKE
ERIE RAILROAD COMPANY, ET AL.

Submitted August 22, 1921. Decided March 18, 1922.

Defendants' diversion rule applicable to a carload shipment of wrought-iron pipe from Woodlawn, Pa., to Seguro, Calif., found not unreasonable. Assessment thereunder of charges on this shipment in excess of those for one diversion found not justified and shipment overcharged. Refund of overcharge directed and complaint dismissed.

W. O. Banks for complainant.

Elmer Westlake for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, refines and markets oils and other petroleum products. By complaint filed February 5, 1921, as amended, it alleges that the charges collected on a carload shipment of wrought-iron pipe from Woodlawn, Pa., originally consigned to Taft, Calif., and diverted in transit first to Des Moines, Calif., and then to Seguro, Calif., were unjust and unreasonable to the extent that they exceeded charges based on the through rate from point of origin to ultimate destination plus \$2 for the first diversion and \$5 for the second diversion. We are asked to award reparation. Rates will be stated in amounts per 100 pounds.

The shipment weighed 75,910 pounds. It moved from Woodlawn on January 21, 1920, consigned to the Republic Supply Co., Taft, Calif., and routed by the shipper Pittsburgh & Lake Erie, New York Central, Chicago & North Western, Union Pacific, and Southern Pacific. Complainant purchased it while in transit and on February 3, 1920, instructed the original consignee to divert it to Des Moines, a point on the Pacific Electric near Los Angeles, Calif. On that date the agent of the Southern Pacific at San Francisco, Calif., was requested to cause this diversion. He took no action until February 6, 1920, when instructions to divert were telegraphed to the proper officials of the Union Pacific and Southern Pacific at Ogden,

Utah. On February 5, 1920, complainant, finding more urgent need for the pipe at Seguro, so advised the original consignee, which in turn on that date notified the Southern Pacific's agent at San Francisco to change the former diversion and divert the car to Seguro. The Southern Pacific received this request on February 6, 1920, but took no steps to cancel the previous diversion order, which, earlier on that day, had been communicated to the connecting line at Ogden, until February 11, five days later. On February 11 the car passed Green River, Wyo., where diversion to Des Moines was effected. On the following day it arrived at Ogden, where the second diversion was made in compliance with the instructions from San Francisco on February 11.

Defendants' tariffs governing reconsignments and diversions provided that only one change in destination would be permitted at the through rate from point of origin to final destination, and that if subsequent change were requested, necessitating movement of the car, the shipment would be treated as a reshipment from the point of reforwarding and would be charged at the tariff rate therefrom plus \$5. In accordance with these provisions charges of \$948.88 were collected for the movement to Ogden at a commodity rate of \$1.25 plus \$2 for the first diversion; and \$929.89 beyond at the fifth-class rate of \$1.225, plus \$5 for the second diversion; resulting in a total charge of \$1,885.77. But this fifth-class rate from Ogden did not apply to points off the Southern Pacific's main line, and the applicable rate from Ogden to Seguro was the combination on Oil Junction, Calif., using the \$1.225 rate to the basing point and a fifth-class rate of 5 cents beyond. The \$1.25 rate from Woodlawn applied also to Des Moines and Oil Junction.

If defendant Southern Pacific had acted with reasonable diligence after receiving the request for change in the original diversion order only one diversion would have been necessary, and the charges would have amounted to \$988.83, at the combination rate of \$1.30, composed of \$1.25 from Woodlawn to Oil Junction and 5 cents thence to Seguro, plus \$2 for diversion.

The rule limiting to one the number of diversions which may be made at the through rate is assailed by complainant as applied to cases like this where there is no out-of-line or back haul and the contents of the car remain unchanged. The rule is of general application and, under the fifteenth section amendment then in force which required our approval of increases, had been approved by us for filing with the proviso that such approval should not affect any subsequent proceeding relative thereto.

In this case the rule was applied because the Southern Pacific failed to transmit promptly the instructions to disregard the first

diversion order. Ample time intervened between February 6, when these instructions were received, and February 11, when they were complied with, in which to effect substitution at Green River. Under these circumstances complainant can be charged with one diversion only.

Complainant purchased the shipment f. o. b. Des Moines with freight charges of \$948.88 assumed by the original consignee. Complainant's interest is limited to the excess charges caused by the second diversion, considering also the difference between the rates to Des Moines and Seguro. This amounts to \$896.94.

Upon this record we find that defendant's diversion rule was not unreasonable; that the assessment thereunder by the Southern Pacific Company of charges on this shipment in excess of those which would have accrued on the basis of one diversion was not justified; and that the shipment was overcharged in the amount of \$896.94. Defendant Southern Pacific Company should promptly refund that amount to complainant, with interest. The complaint will be dismissed.

68 I. C. C.

No. 12470.

ROCK PRODUCTS TRAFFIC LEAGUE (FLINT PEBBLE
DIVISION)

v.

BALTIMORE & OHIO RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted September 16, 1921. Decided March 18, 1922.

Rates on imported flint pebbles and flint brick, in carloads, from Boston, Mass., New York, N. Y., and Baltimore, Md., to Silica, East Liverpool, and Laughlin, Ohio, found not unreasonable. Complaint dismissed.

J. H. Kane and Ralph E. Riley for complainant.

Charles R. Webber for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant is an organization of shippers of ground sand. By complaint filed February 25, 1921, it alleges that the rates charged certain of its members on imported flint pebbles and flint brick, in carloads, shipped from Boston, Mass., New York, N. Y., and Baltimore, Md., to Silica, East Liverpool, and Laughlin, Ohio, during the four years and two months prior to February 26, 1921, were, and that the present rates are, unreasonable to the extent that they exceeded or exceed the rates contemporaneously in effect on glass sand and pulverized flint from and to the same points. We are asked to award reparation and to establish reasonable rates for the future. At the hearing it developed that there is no complaint as to the rates in effect prior to June 25, 1918. Rates will be stated in cents per 100 pounds.

Flint pebbles and flint brick are imported from Belgium, France, Norway, and Sweden and are used by complainant's members in grinding sand for glass, pottery, and metal-fabrication industries. Sand and flint pebbles are placed in large metal tubes or mills lined with flint brick, and the grinding is accomplished by the action of the pebbles on the sand and brick while the mill is being revolved. The product is pulverized flint. The pebbles wear out rapidly but the life of the brick is longer. The sand used is practically pure

silica and it is necessary that the pebbles and the brick be of equally high silica content, as they ultimately become a part of the product. The chemical components of the pebbles and the brick are the same, but the value of the former is from two to three times greater than that of the latter.

Domestic rates and a minimum weight of 40,000 pounds applied, although the average loading was and is considerably in excess of that weight. East Liverpool and Laughlin are in 60 per cent territory and take the same rates and Silica is in 78 per cent territory. Most of the shipments moved from New York. The following table shows the rates from New York to East Liverpool and Laughlin since June 24, 1918. The present rates on flint pebbles and flint brick from Boston are 3 cents higher, and from Baltimore 3 cents lower, than those shown.

Commodity.	Rate June 24, 1918.	Rate June 25, 1918, to Aug. 25, 1920.	Rate Aug. 26, 1920, to present.
	Cents.	Cents.	Cents.
Flint pebbles.....	17	21.5	30
Flint brick.....	17	19	26.5
Pulverized flint.....	17	18	25
Glass sand.....	14.5	15.5	21.5

With slight variations the rates to Silica have been and are approximately 4 cents higher than the rates shown above. On June 25, 1918, the rates on flint pebbles were increased 25 per cent; those on flint brick 2 cents; and those on pulverized flint and glass sand 1 cent.

The main contention is that the rates established on June 25, 1918, reflected increases in the rates in effect on June 24, 1918, greater than those prescribed in General Order No. 28 of the Director General of Railroads and, therefore, were unauthorized and illegal to the extent of the excess. That order prescribed, among others, the following increases in domestic rates: Stone, broken, crushed, and ground, 1 cent; sand and gravel, 1 cent; and brick, except enameled or glazed, 2 cents. In special supplements effective June 25, 1918, flint pebbles were excepted from the sand and gravel description and "silica rock" was included in the stone (broken, crushed, and ground) description.

Complainant contends (1) that flint pebbles and flint brick are stone, or (2) that they are silica rock, and therefore that the rates should have been, and under the special supplements were, increased 1 cent. Defendants explain that the flat advances prescribed in the general order and published in the tariffs were intended to be,

and were, applied only to the commodities specifically named, and that the rates specifically applicable to flint pebbles and flint brick were properly advanced 25 per cent and 2 cents, respectively.

Without attempting to say whether or not the provisions of General Order No. 28 were strictly complied with, it is sufficient to observe that the shipments were billed as flint pebbles and flint brick and that the applicable rates on those commodities were assessed. We have uniformly held that failure to adhere strictly to the terms of an order of the director general does not invalidate the published rates. The controlling question is whether the published rates were unreasonable or otherwise unlawful.

Complainant compares the rates assailed with lower rates on pulverized flint, glass sand, molding sand, gravel and crushed stone, stone and granite, plaster board and stucco, granite paving blocks, and marble from New York and Barre, Vt., to these destinations, primarily for the purpose of showing that the rates on those commodities were increased only 1 or 2 cents under General Order No. 28. Particular stress is laid on the fact that the rates on flint brick are less than on flint pebbles, a lower-valued commodity, though the average loading of both is about the same and they are transported in similar equipment. Such comparisons alone are not conclusive that the higher rates are unreasonable.

Defendants show that a higher basis of rates has been maintained on flint pebbles than on glass sand from eastern points to central territory, and that the rates on flint brick from New York to East Liverpool and Laughlin are the same as, and to Silica lower than, the rates on building, fire, paving, and pressed brick. They call attention to lighterage and other expenses assumed by them in connection with shipments of imported flint pebbles and flint brick from New York, which are not incident to the transportation of any of the other commodities mentioned by complainant.

In *Silica Sand Producers Traffic Asso. v. C., B. & Q. R. R. Co.*, 64 I. C. C., 302, we found that a rate of 36.5 cents in effect subsequent to June 25, 1918, on flint pebbles from New York to Ottawa, Wedron, and Millington, Ill., was not unreasonable. The evidence submitted in that case was much the same as in this.

Following the case cited and upon this record, we find that the rates assailed were not and are not unreasonable. The complaint will be dismissed.

No. 12264.

AMERICAN MANGANESE STEEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO
CHICAGO TERMINAL RAILROAD COMPANY, ET AL.

Submitted October 15, 1921. Decided March 18, 1922.

Rate on iron-foundry flasks from Chicago Heights, Ill., to Oakland, Calif., found unreasonable. Reparation awarded, and reasonable rate prescribed for the future.

Forrest B. McElroy, H. M. Carter, and C. B. Cardy for complainant.

John F. Finerty, Royal McKenna, and Fred W. Heid for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by the director general, as agent, to the report proposed by the examiner.

Complainant, a corporation manufacturing iron and steel products at Chicago, Ill., alleges by complaint filed February 14, 1921, that the rate charged on a carload of foundry flasks shipped September 8, 1919, from its plant at Chicago Heights, Ill., to Oakland, Calif., was unreasonable. We are asked to establish a reasonable rate for the future and to award reparation. Rates will be stated in amounts per 100 pounds.

A foundry flask is a box-shaped container for the sand and mold used in making castings. Those comprised in this shipment were of rough cast iron, and appear to have been 12 inches high, some 50 inches long and 38 inches wide, and others 60 inches square. They were composed of several sections bolted together, with wrought-iron handles.

The flasks, aggregating 108,400 pounds, were shipped loose, knocked down, in an open-top car, and moved as routed by the shipper over the defendant carriers' lines 2,284 miles. Charges of \$2,373.96 were collected at the applicable joint fifth-class rate of \$2.19. The present fifth-class rate is \$2.92. Complainant contends that the rate assailed was unreasonable to the extent that it exceeded

\$1.125, the commodity rate contemporaneously applicable on rough iron and steel castings and ingot molds.

The value of foundry flasks is about 3 cents per pound. No machine work is performed thereon and they are somewhat similar to rough iron castings and ingot molds. A joint commodity rate of \$1.125 was contemporaneously applicable to link chain, conduits, fabricated structural steel, nails, and other iron and steel articles of equal or higher grade than foundry flasks. The present rate on iron and steel articles including those named is \$1.50.

Defendants contend that the rates on iron and steel articles were originally established to meet water competition through the Panama Canal but in *Transcontinental Rates*, 46 I. C. C., 236, we withdrew fourth-section relief because of the falling off of that competition. The absence of a correspondingly low commodity rate on this traffic was due to the absence of movement. Complainant made this shipment to supply its newly established plant.

In *Moreland Motor Truck Co. v. Director General*, 60 I. C. C., 179, we found that the rate on pressed-steel side members of automobile truck frames which moved in November, 1919, from Milwaukee, Wis., to Los Angeles, Calif., was unreasonable to the extent that it exceeded the rate contemporaneously in effect on structural steel channels, which at that time was \$1.125. Such articles are higher-grade commodities than cast-iron foundry flasks.

We find that the rate applicable was unreasonable to the extent that it exceeded \$1.125; and that for the future it will be unreasonable to the extent that it exceeds \$1.50; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$1,154.46, with interest.

An appropriate order will be entered.

68 I. C. C.

No. 12331.¹

FRICK-REID SUPPLY COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PITTSBURGH & LAKE
ERIE RAILROAD COMPANY, ET AL.

Submitted October 31, 1921. Decided March 18, 1922.

Charges collected on carload shipments of oil-well supplies from eastern points to St. Louis, Mo., and Fort Worth and Dublin, Tex., diverted or reconsigned on authorized permits to points in Texas, found illegal. Reparation awarded.

Edward W. Wilson for complainant.

John F. Finerty and *Thomas M. Woodward* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by the director general, as agent, to the report proposed by the examiner.

Complainant, a corporation, is a jobber of oil-well supplies with general offices at Tulsa, Okla. By complaints, filed February 17, 1921, it alleges that the charges collected on 13 carloads of oil-well supplies shipped from eastern points to St. Louis, Mo., and Fort Worth and Dublin, Tex., and diverted on authorized permits to embargoed stations in the Texas oil fields, were illegal and unreasonable. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

No evidence was adduced in support of the allegation of unreasonableness.

The details of the shipments and the through rates which complainant contends were applicable are as follows:

¹ This report also embraces No. 12331 (Sub-No. 1), Same v. Director General, as Agent, Baltimore & Ohio Railroad Company, et al.; No. 12331 (Sub-No. 2), Same v. Director General, as Agent, Erie Railroad Company, et al.; No. 12331 (Sub-No. 3), Same v. Director General, as Agent, Toledo, St. Louis & Western Railroad Company, et al.; No. 12331 (Sub-No. 4), Same v. Director General, as Agent, Pennsylvania Railroad Company, et al.; and No. 12331 (Sub-No. 5), Same v. Pennsylvania Railroad Company et al.

Date of shipment.	Commodity.	Origin point.	Original destination.	Destination as diverted (Texas).	Rates applied—			Through rates.
					To original destination.	To final destination.	Combination.	
Dec. 13, 1919	Iron pipe...	Woodlawn, Pa.	St. Louis, Mo.	Eastland..	Cents. 34	Cents. 50	Cents. 84	Cents. 74
Jan. 2, 1920	.....do.....	.....do.....	.....do.....	Ranger....	34	50	84	74
Jan. 18, 1920	.....do.....	.....do.....	.....do.....	Eastland..	34	50	84	74
Feb. 19, 1920	.....do.....	.....do.....	.....do.....	Ranger....	34	50	84	74
Feb. 25, 1920	.....do.....	.....do.....	.....do.....	.....do.....	34	50	84	74
Dec. 29, 1919	.....do.....	Wheeling, W. Va.	.....do.....	.....do.....	34	50	84	74
Dec. 13, 1919	Boilers.....	Parkersburg, W. Va.	.....do.....	Olden.....	29	99	128	125
Jan. 2, 1920	.....do.....	.....do.....	.....do.....	Ranger....	29	99	128	125
Dec. 26, 1919	Engines....	Oil City, Pa.	.....do.....	.....do.....	34	99	133	125
Dec. 31, 1919	.....do.....	.....do.....	.....do.....	.....do.....	34	99	133	125
Dec. 19, 1919	Iron suck- er rods.	Toledo, Ohio.	.....do.....	.....do.....	28.5	81.5	108	102.5
Feb. 16, 1920	Iron pipe fittings.	Huff, Pa.....	Fort Worth, Tex.	.....do.....	.....	.....	1 166	74
Oct. 27, 1919	Wire rope..	Trenton, N.J.	Dublin, Tex.	Gorman...	.....	.....	1 164	131.5

¹ Combination made on Mississippi River and original destination.

Diversion of some of the shipments billed to St. Louis was effected at East St. Louis, Ill., and the car consigned to Fort Worth was diverted at Memphis, Tenn. The other shipments appear to have been reconsigned at the original destinations. In addition to the rates charged, defendants collected certain charges for reconsignment and switching which are not assailed. The shipment of boilers from Parkersburg to St. Louis, reconsigned to Olden, was re-shipped to Ranger. The charges accruing after placement at Olden are not in issue.

During the period of movement embargoes were in force against the points of ultimate destination. The tariffs naming the through rates provided that shipments made at the rates carried therein would be subject to terminal charges and privileges, including reconsignment, authorized by the tariffs of the individual carriers parties thereto. Reconsignment tariffs of the carriers which accomplished the diversions, all of which participated in the publication of the through rates, authorized the application, on shipments handled under the rules published therein, of the through rates in effect on dates of shipment from points of origin to final destinations, by way of the diversion, reconsignment, or reforwarding points. The reconsignment rules of these defendants included, under the heading "Conditions," the uniform provision that orders for diversion or reconsignment would not be accepted at or to a station or to a point of delivery against which an embargo was in force or, except on perishable freight and certain specified commodities, to points which were embargoed at the time shipments were forwarded from points

of origin. It was further provided, however, that "Shipments made under authorized permits are not subject to this condition."

At the instance of complainant the lines serving the points of final destination issued permits covering the shipments, in the form of telegrams addressed to their connections, of which the following message under date of January 2, 1920, from the Texas & Pacific at Dallas, Tex., to the Missouri Pacific at St. Louis, Mo., is typical:

Accept one car pipe from Frick-Reid Supply Co., St. Louis, same consignee Olden, Tex. Permit expires January 15th, U-5166.

When the permits were issued the Texas lines advised complainant of the serial numbers thereof. Complainant thereupon, by letter or by telegram confirmed by mail, instructed the lines over which the shipments were routed into the original destinations to "reconsign on through rate" to the several Texas points. In each instance complainant cited the number of the permit covering the particular car as authority for the reconsignment requested.

Defendants take the position that the exception of shipments made under authorized permits from the tariff prohibition against reconsignment to embargoed points contemplated only cars moved under permits from points to origin. They further contend that the permits covering complainant's shipments merely authorized carriers serving the original destinations to accept the cars as independent movements made from those points on new bills of lading. They direct attention to the following instructions to the Eastland agent of the Texas & Pacific, which appear in a note to him upon one of the permits:

If this car is reconsigned on through rate in violation of embargo rules please see that proper freight rate is collected before shipment is delivered to destination.

The facts are that the carriers did not exercise the rights which they had under the tariffs to refuse to accept order for diversion or reconsignment to embargoed points, but diverted or reconsigned the shipments, without requiring new bills of lading, to the embargoed stations upon complainant's written instructions. In most instances complainant was advised that the cars had been "reconsigned as requested." Their character as diverted or reconsigned shipments was thus fixed by the voluntary action of the carriers, and as such they became subject to the charges authorized in the tariff regulations previously referred to governing diversions and reconsignments.

During the period of movement the reconsignment rules of defendants provided a charge of \$2 per car in addition to the through rates on shipments diverted in transit prior to arrival at original destinations, and on cars reconsigned at billed destinations on orders received in time to permit of instructions being given to yard em-

ployees prior to arrival. On shipments reconsigned to points outside the switching limits of original destinations on orders received after arrival but before placement, or after arrival at terminal yards serving original destinations, a reconsignment charge of \$5 per car applied. Cars reconsigned to points outside the switching limits of original destinations on orders received after placement were subject to the published rates to and from such points, plus \$5 per car. The record does not contain sufficient evidence of the time of arrival of the cars reconsigned at the original destinations, or of the time the orders to reassign those cars were received by the carriers, from which to determine as to such shipments the rates and charges applicable under the described provisions of the reconsignment tariffs.

We find that the charges collected on shipments diverted in transit before arrival at the original destinations or reconsigned at those points on orders received prior to placement for unloading, and forwarded to embargoed points, were illegal to the extent that they exceeded the charges which would have accrued at the through rates in effect from points of origin via the points of diversion or reconsignment to the final destinations, plus any applicable reconsignment, switching; or other special charges; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges collected and those which would have accrued at the rates and special charges applicable; and that it is entitled to reparation with interest. The parties should submit a statement in accordance with Rule V of the Rules of Practice, including therein information concerning dates of arrival at original destinations, dates reconsignment orders were received by defendants, and any other facts necessary to a determination of the amount of reparation.

No. 12467.

LOS ANGELES ICE & COLD STORAGE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CENTRAL RAILROAD
COMPANY OF NEW JERSEY, ET AL.

Submitted October 25, 1921. Decided March 18, 1922.

Less-than-carload shipments of paper bottle-neck wrappers or caps from Vineland, N. J., to Los Angeles, Calif., found to have been overcharged. Refund of overcharges directed and complaint dismissed.

F. P. Gregson for complainant.

John F. Finerty, Thomas M. Woodward, and E. W. Camp for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by the director general, as agent, to the report proposed by the examiner.

Complainant, a corporation distilling and distributing water in Los Angeles, Calif., by complaint filed February 25, 1921, alleges that the rate charged on six less-than-carload shipments of paper bottle-neck wrappers or caps shipped from Vineland, N. J., to Los Angeles during the period of Federal control was unreasonable. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments moved between October 29, 1918, and September 9, 1919. These wrappers or caps are circular sheets of plain white paper about 7 inches in diameter, crimped or pleated by machine, and are used to cover the corks and necks of 5-gallon bottles in which complainant distributes drinking water. They were shipped nested in small paper boxes packed in a carton framed with wood. Their value per 1,000, weighing about 3 pounds, is about \$2. Charges were assessed at a commodity rate of \$3.44 applicable on paper and articles of paper "Stamped, for decorating purposes." Complainant has been shipping this commodity since 1917 and prior to October, 1918, the rate assessed was a commodity rate of \$2.74 applicable on "CAPS, in boxes * * * viz: Bottle, Can, Fruit Jar." The rate on these caps, in crates, was 25 per cent higher, or \$3.425. Complainant

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contends that the rate of \$2.74 was applicable, although the suggestion was made that a commodity rate of \$2.565 provided for corrugated or indented paper bottle wrappers, which are used to completely cover bottles, was applicable. Wrappers of this kind weigh 5 or 6 pounds per 1,000 and are worth about \$1.60.

Defendants claim that the proper rate was assessed and that the commodity rates on bottle caps are applicable to a tin cap with crimped edge and lined with a thin layer of cork such as is commonly used on soda-water or cereal-beverage bottles. The commodity shipped was invoiced as bottle caps and is known to the trade under that term. It falls within the description of the commodity on which the \$2.74 and \$3.425 rates were applicable. If it was the defendants' intention to restrict the application of those rates to tin or other metal caps, they failed to do so in publishing the tariff. Paper bottle caps were entitled to those rates and these shipments were overcharged. The overcharges should promptly be refunded, with interest.

The complaint will be dismissed.

68 I. C. C.

No. 12648.

SWIFT & COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted October 19, 1921. Decided March 18, 1922.

Rates on fresh meats and dressed poultry, in carloads, from Kansas City, Kans., South St. Joseph, Mo., and Omaha, Nebr., and on packing-house products, in carloads, from Kansas City and South St. Joseph, to Ohio River crossings, applicable on traffic destined to southeastern territory, found unjust and unreasonable. Reasonable maximum rates prescribed for the future.

R. D. Rynder for complainant.

C. C. P. Rausch for defendants.

W. W. Manker for Armour & Company, intervener.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

In this complaint, filed March 21, 1921, the rates on dressed poultry, fresh meats, and packing-house products, in carloads, from Kansas City, Kans., South St. Joseph, Mo., and Omaha, Nebr., to Ohio River crossings, applicable on traffic destined to points in southeastern territory, are alleged to be unreasonable and unduly prejudicial by reason of their increase by 0.5 cent on December 2, 1920. Future relief only is sought. At the hearing Armour & Company tendered a petition of intervention in support of the complaint, attempting in addition to put in issue rates from Sioux City, Iowa, St. Paul, Minn., and Chicago and East St. Louis, Ill., and praying for reparation. To the extent that this petition thus broadens the issues raised by the complaint it will not be considered. Rates are stated in cents per 100 pounds.

Complainant and intervener make large shipments of the commodities here considered into the Southeast from their plants at various Missouri River points, the rates being made by combination on Ohio River and Mississippi River crossings. From 1909 to August 26, 1920, the through rates via all these crossings were the same,

but the application of the percentage increases authorized by us, effective on the latter date, made the through rates via Memphis, Tenn., to certain destinations 1 cent and to others 0.5 cent higher than those available via Cairo, Ill., and other Ohio River crossings. In order to restore the parity formerly existing, defendants made the increase complained of, publishing a rate of 29.5 cents on packing-house products from Kansas City and South St. Joseph, and rates on fresh meats and dressed poultry of 37.5 cents from those two points and 43 cents from Omaha. With the same object the carriers operating southward from the Ohio River crossings attempted to make similar increases in the factors applicable to the hauls beyond the crossings in those instances where the through rates were lower via those gateways than via Memphis, but that increase was not permitted to go into effect. *Fresh Meats and Dressed Poultry from Ohio River*, 61 I. C. C., 610. The facts stated in that report are almost identical with those on which the instant case is based.

For complainant it is pointed out that defendants have made no attempt to equalize their class rates from Kansas City and St. Joseph to southeastern destinations via Cairo with those applicable between the same points via Memphis, and the same is true of certain commodity rates. Complainant and intervener state that they have no interest in equalizing the rates through the various gateways and contend that if the carriers desire such equalization they should bring it about by reducing the rates via Memphis rather than by increasing the rates via the Ohio River crossings in amounts exceeding those authorized by us to become effective August 26, 1920. We are impressed with the soundness of this contention. Defendants offered no evidence and admit that the decision in *Fresh Meats and Dressed Poultry from Ohio River*, *supra*, is controlling here.

We find that the rates assailed are, and for the future will be, unjust and unreasonable to the extent that they exceed the following, in cents per 100 pounds: From Kansas City and South St. Joseph on packing-house products 29 cents, and on fresh meats and dressed poultry 37 cents; and from Omaha on fresh meats and dressed poultry 42.5 cents.

An appropriate order will be entered.

68 I. C. C.

No. 12852.

FARMERS ELEVATOR COMPANY OF SOUTHERN LAKE
COUNTY, IND.,

v.

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY
COMPANY, ET AL.

Submitted October 17, 1921. Decided March 18, 1922.

Rate applicable on hay, in carloads, from Dinwiddie, Ind., to Memphis, Tenn.,
found unreasonable and unduly prejudicial. Reparation awarded.

J. W. Belshaw for complainant.

A. C. Tummy, for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Complainant, a corporation dealing in hay, grain, and other commodities with its principal office at Lowell, Ind., alleges that the rate of 47 cents charged on and since January 11, 1921, for the transportation of certain carloads of hay from Dinwiddie, Ind., to Memphis, Tenn., was and is unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded and exceeds the rate contemporaneously in effect from Lowell and North Hayden, Ind., to the same destination. We are asked to prescribe a reasonable rate for the future and to award reparation. Rates are stated in cents per 100 pounds.

Dinwiddie is a local point on the "C. & W. V. Division" of the Chicago, Indianapolis & Louisville, about 6 miles east of Lowell, on the main line of that carrier. North Hayden, about 1 mile west of Lowell, is a local point on the Danville branch of the New York Central. Complainant competes with dealers at Lowell.

From Lowell and North Hayden a joint rate of 30 cents applied and applies to Memphis but the applicable rate from Dinwiddie was and is the lowest combination. Apparently these shipments moved through Louisville, Ky., in connection with the Louisville & Nashville, beyond, some being charged 30 cents and others 47 cents. Over this route, the applicable combination was 46 cents, composed of 27 cents to Louisville and 19 cents beyond. Some of the shipments were undercharged and others overcharged. Defendants concede that a difference in the respective rates is not and was not warranted by

transportation conditions and express their willingness to maintain a rate from Dinwiddie no higher than contemporaneously maintained from Lowell and to pay reparation to the basis claimed.

We find that the applicable rate was, is, and for the future will be, unreasonable and unduly prejudicial to the extent that it exceeded, exceeds, or may exceed the rate contemporaneously maintained on the same commodity from Lowell to Memphis. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice, including in the statement any outstanding undercharges or overcharges.

An appropriate order will be entered for the future.

68 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1498.
RECONSIGNMENT OF LUMBER AND OTHER FOREST
PRODUCTS AT BOSTON, IND.

Submitted March 14, 1922. Decided March 30, 1922.

Proposed reduction by Chesapeake & Ohio of reconsignment charge on lumber and other forest products, in carloads, at Boston, Ind., found not justified. Suspended schedules ordered canceled and proceeding discontinued.

No appearance for respondent.

Geo. N. Brown and *Frank Carnahan* for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective February 28, 1922, respondent, the Chesapeake & Ohio Railway, proposes to publish a reconsignment charge of \$3 per car at Boston, Ind., on lumber and other forest products received at Cincinnati, Ohio, from connecting lines and destined to points on its line or the lines of its connections. The operation of these schedules was suspended by us until June 28, 1922.

The present charge is \$3 if reconsigning instructions are received before arrival of the car, and \$7 if received after arrival. The suspended tariff therefore proposes a reduction from \$7 to \$3 upon shipments of the latter description.

Boston is 54.9 miles northwest of Cincinnati, on respondent's line to Chicago, Ill. The proposed reduction would eliminate any inducement for shippers to give reconsignment instructions before arrival of the car. The result would be a tendency toward congestion of traffic. In *American Wholesale Lumber Asso. v. Director General*, 66 I. C. C., 393, a like proposal by another carrier was found not justified. The present charges are generally uniform on all railroads throughout the country and were approved by us in the *Reconsignment case*, 47 I. C. C., 590.

Respondent was not represented at the hearing.

We find that the suspended schedules have not been justified. An order requiring their cancellation and discontinuing this proceeding will be entered.

68 I. C. C.

No. 12622.

CONTINENTAL PAPER COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, ET AL.

Submitted November 3, 1921. Decided March 18, 1922.

Rates applicable on waste paper, in carloads, from New York, Brooklyn, and Long Island City, N. Y., to Bogota, N. J., found unreasonable to the extent that the factor beyond Little Ferry, N. J., exceeded or exceeds amounts stated in report. Reparation awarded and reasonable maximum rates prescribed.

John Andrew Ronan for complainants.*Marion B. Pierce* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainants are corporations manufacturing paper products at Bogota, N. J. By complaint filed February 28, 1921, as amended, they allege that the sixth-class rates charged on waste paper, in carloads, shipped from New York, Brooklyn, and Long Island City, N. Y., to Bogota, subsequent to June 25, 1918, were and are unreasonable, unjustly discriminatory, and unduly prejudicial. The prayer is for reparation and the establishment of just and reasonable rates. The only shipments covered by the evidence were made by the Continental Paper Company, and the report will be confined thereto. Rates will be stated in cents per 100 pounds.

Bogota, approximately 13 miles north of Jersey City, N. J., is served by the New York, Susquehanna & Western, hereinafter called the Susquehanna, and the West Shore. The shipments consisted of waste paper, baled, and moved over the West Shore to Little Ferry, N. J., about 6 miles north of Weehawken, N. J., thence 2.2 miles over the Susquehanna, the only carrier which directly serves complainants' plants. The applicable sixth-class rates from New York were 7 cents to Little Ferry and 7 cents beyond, or 14 cents, until increased on August 26, 1920, to 20 cents, each factor becoming 10 cents. From

Brooklyn and Long Island City the sixth-class rates to Little Ferry were 9 cents prior to August 26, 1920, and 12.5 cents thereafter, resulting in combination rates of 16 and 22.5 cents, respectively. Some of the shipments may have been overcharged.

The rate from New York prior to June 25, 1918, over the route of movement was 8.5 cents, 5.5 cents to Little Ferry and 3 cents beyond. On that date both factors were increased to 7 cents, the second factor taking the minimum sixth-class rate prescribed in General Order No. 28 of the Director General of Railroads. Complainants' principal objection is to the amount of the increases on June 25, 1918. They contend that under General Order No. 28 the combination rates and not the separate factors should have been increased by 25 per cent and the resulting combination rates as thus increased should have taken the additional 40 per cent on August 26, 1920. On June 24, 1918, the rate from New York to Bogota over the West Shore direct was 5.5 cents, and over the Erie and Susquehanna 8 cents, increased on June 25, 1918, to 7 and 10 cents, respectively, and on August 26, 1920, to 10 and 14 cents, respectively. We have repeatedly found that the failure strictly to observe the terms of General Order No. 28 does not of itself impair the validity of the published rate. That fact, if it be a fact in this instance, affords no basis for determining whether or not the rates in issue were reasonable.

The earnings per car of \$28 under the rate in effect from New York prior to August 26, 1920, based on a minimum of 20,000 pounds, are compared by complainants with the earnings under rates on the same and other waste materials and on manufactured paper products between other points, in many instances for far greater hauls. They show that this traffic moves under combinations of full sixth-class rates, while specific commodity rates are maintained on waste paper and on manufactured paper products between other points which in some instances are as low as 60 per cent of the respective class rates.

On traffic from New York, destined to a delivery in Little Ferry on the rails of the Susquehanna, the West Shore provides for absorption, partial or complete, of the Susquehanna's switching charges provided they do not exceed \$7 per car, subject to an aggregate minimum revenue of \$24.50 for the line haul. When the revenue for line haul falls below that minimum the amount of absorption is determined by deducting the minimum from the sum of the road-haul charge and the switching charge. This switching charge at Little Ferry is \$7 per car, and at the 10-cent rate and 20,000-pound minimum weight from New York to Little Ferry, the line-haul revenue would be \$20, with a resulting sum of \$27. Deducting therefrom the specific minimum revenue of \$24.50 would leave \$2.50 as the amount per car to be absorbed by the West Shore

and result in reducing the West Shore's net earnings on such a movement to \$17.50 for the car or 8.75 cents per 100 pounds.

Complainants therefore contend that it is unreasonable to assess them the full locals to and beyond the junction. It is admitted that the movement beyond Little Ferry is a line haul, the charge for which may not be absorbed in whole or in part by the West Shore. The arrangement at Little Ferry is reciprocal and affords no basis for determining the reasonableness of the charges assailed which apply for different services and under different circumstances.

The waste paper is loaded at certain receiving stations in New York and floated across the harbor to Weehawken. The cost of this service is said by defendants' witness to range from \$8.45 to \$11.80 a car. The movement beyond is through a territory of heavy traffic density, Bogota being within the so-called commuter zone and on the route over which considerable tidewater coal passes to Undercliff, N. J.

In *International Purchasing Co. v. A., C. & Y. Ry. Co.*, 51 I. C. C. 163, the official classification sixth-class rating on this commodity was found not unreasonable. But we think that the application on this traffic of a combination composed of two local sixth-class rates results in unreasonable charges.

We find that the rates assailed were, are, and for the future will be, unreasonable to the extent that the factor from Little Ferry to Bogota, N. J., when used in combination on traffic from New York, Brooklyn, and Long Island City, N. Y., exceeded 4 cents per 100 pounds from June 25, 1918, until August 26, 1920, and to the extent that it exceeded or exceeds 5.5 cents per 100 pounds on and after the latter date. We further find that complainant Continental Paper Company made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation with interest. That complainant should comply with Rule V of the Rules of Practice, including in the statement any outstanding overcharges.

An appropriate order will be entered.

68 I. C. C.

No. 12370.

PHILLIPS EXCELSIOR COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND SOUTHERN
RAILWAY COMPANY.

Submitted November 9, 1921. Decided March 18, 1922.

Rates applicable on excelsior bolts, in carloads, from Cohutta, Ga., and McDonald, Summit, and Tyner, Tenn., to Chattanooga, Tenn., during the period from August 12, 1919, to April 16, 1920, found unreasonable. Waiver of undercharges authorized on shipments subject to our jurisdiction, and measure of reasonable rate from Cohutta to Chattanooga prescribed for the future.

John S. Fletcher for complainant.

H. L. Walker for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By Division 3:

No exceptions were filed to the report proposed by the examiner. Complainant, G. D. Andrews, manufactures excelsior at Chattanooga, Tenn., under the trade name of Phillips Excelsior Company. By complaint filed February 21, 1921, he alleges that the rates charged on 14 carloads of excelsior bolts shipped from Cohutta, Ga., and McDonald, Summit, and Tyner, Tenn., to Chattanooga, during the period from August 12, 1919, to April 16, 1920, were unjust and unreasonable to the extent that they exceeded the rates applicable to cordwood. All the shipments except one from Tyner moved during Federal control. We are asked to award reparation and to prescribe reasonable rates or ratings for the future.

The shipments consisted of green pine wood sawed into bolts not exceeding 48 inches long and suitable for manufacture into excelsior. They aggregated 1,228,400 pounds, or about 200 cords, and moved over the Southern. Charges were collected in the sum of \$305.09, at the commodity rates on logs, namely, 3 cents per 100 pounds from Cohutta, 27 miles, and rates per car based on 40,000 pounds, excess in proportion, of \$11.50 from McDonald, 21 miles; \$10 from Summit, 13 miles; and \$9 from Tyner, 10 miles. The cordwood rates were \$1.25 per cord of 160 cubic feet from Cohutta, and \$1.125 per cord

from the other points. The class-A rates of 19, 15, 12.5, and 10 cents per 100 pounds from Cohutta, McDonald, Summit, and Tyner, respectively, were applicable. All these rates, as increased August 26, 1920, are still in effect. Defendants make no attempt to justify the applicable rates, but contend that the log rates are reasonably low to move the traffic. They request authority to waive undercharges on these shipments and the Southern expresses its intention to amend its tariffs so that log rates will hereafter be applicable on excelsior bolts.

Excelsior bolts were valued at about \$4.50 per cord and cordwood at about \$4. Excelsior bolts are somewhat heavier, as cordwood is usually dry. Of the excelsior bolts received by complainant nine-tenths do not exceed 8 inches in diameter. The tariffs of carriers, other than the Southern, which serve Chattanooga and Pensacola, Fla., a competitive excelsior-producing point, provide that excelsior bolts not exceeding 8 inches in diameter shall take cordwood rates.

Under the latter tariffs a section of a tree in excess of 8 inches in diameter falls within the commodity description of a log. Complainant raises some question as to the reasonableness of the tariff restrictions as to diameter, pointing out that as a result the carriers require that wood exceeding a certain diameter be subjected to an additional process, namely, splitting, before they will accord it a lower rate. Such a restriction is not unlike the rule that secondhand iron articles be broken up before they are accorded scrap-iron rates. As approximately 10 per cent of the bolts shipped exceeded 8 inches in diameter the carload rate on logs, or substantially equivalent rates, would have been applicable thereon over any of the other lines serving Chattanooga, by virtue of the mixed-carload rule.

We find that the rates applicable to these shipments were unreasonable to the extent that they exceeded the rates contemporaneously in effect on logs, and accordingly authorize the waiver of undercharges as requested on the shipments subject to our jurisdiction. We further find that the rate maintained over the Southern on excelsior bolts, namely, green pine wood not exceeding 48 inches in length and 8 inches in diameter, in carloads, from Cohutta, Ga., to Chattanooga, Tenn., is, and for the future will be, unjust and unreasonable to the extent that it exceeds the rate contemporaneously maintained on cordwood, in carloads, from and to those points. Upon the issues raised by this complaint we are without authority to prescribe rates for the future from and to the other points for intrastate application.

An appropriate order will be entered.

No. 12557.

NORTHERN WEST VIRGINIA COAL OPERATORS'
ASSOCIATION

v.

PITTSBURGH & LAKE ERIE RAILROAD COMPANY ET AL.

Submitted November 21, 1921. Decided March 23, 1922.

Practices of the Pennsylvania and the Pittsburgh & Lake Erie railroads during the period from March 1, 1920, to January 1, 1921, in the distribution of coal cars to mines on the Monongahela Railway and the Morgantown & Wheeling Railway found not to have been unreasonable, unjustly discriminatory, or unduly prejudicial to operators of coal mines on those roads. Complaint dismissed.

George S. Brackett and George T. Bell for complainant.

Guernsey Orcutt and James Stillwell for Pennsylvania Railroad Company and Monongahela Railway Company; *John G. Frazer, John J. Heard, and Reed, Smith, Shaw & Beal* for Pittsburgh & Lake Erie Railroad Company; and *Charles A. Goodwin* for Morgantown & Wheeling Railway Company.

REPORT OF THE COMMISSION.

DIVISION 5, COMMISSIONERS AITCHISON, POTTER, AND LEWIS.

BY DIVISION 5:

Exceptions were filed to the report proposed by the examiners and oral argument was had.

The complainant is an incorporated association, whose members, hereinafter referred to as the operators, own and operate bituminous coal mines in northern West Virginia, on the Monongahela Railway, hereinafter termed the Monongahela, and the Morgantown & Wheeling Railway, hereinafter termed the Wheeling. The operators sell and ship their product largely to dealers and consumers located at points served by or reached in connection with the Pennsylvania Railroad, hereinafter termed the Pennsylvania, and the Pittsburgh & Lake Erie Railroad, hereinafter termed the Lake Erie, and are in competition with coal operators on the lines of said railroads in Pennsylvania, and on the Pennsylvania in Ohio.

The complaint alleges in substance that the car service accorded coal mines served by the Monongahela and Wheeling, during the period from March 1, 1920, to January 1, 1921, was unjust, unreasonable, un-

justly discriminatory, and subjected complainant's members to undue prejudice and disadvantage to the undue preference and advantage of competing operators having coal mines on the Pennsylvania (central region) and the Lake Erie, in violation of the interstate commerce act. We are asked (1) to require the Pennsylvania and the Lake Erie to deliver to the Monongahela, and the Monongahela to deliver to the Wheeling, whenever a coal-car shortage occurs, sufficient cars to accord the mines on those roads the same car supply, on the average, as is contemporaneously accorded, on the average, to the mines on the Pennsylvania (central region) and the Lake Erie; (2) to require that, in case the number of coal cars delivered to the Monongahela or delivered by said Monongahela to the Wheeling, during any month, is more or less than they are entitled to, the discrepancy be adjusted the following month, and that we determine the number of cars by which the mines on said Monongahela and Wheeling fell short of receiving, during the period from March 1, 1920, to January 1, 1921, the same average car supply as mines on the said Pennsylvania (central region) and the Lake Erie; (3) to require said companies during some future period of short car supply, to deliver to the Monongahela the number of cars so found, in addition to the number of cars to which said mines on said railways would be otherwise entitled; or, (4) in case of refusal to grant such relief, to award reparation.

In *Northern W. Va. Coal Asso. v. P. R. R. Co.*, 60 I. C. C., 569, we considered substantially the same issues as applied to the period from July 1, 1919, to March 1, 1920, excluding November, and found that the practices of the director general in the distribution of coal cars as between the mines as a whole on the Monongahela and the Morgantown & Wheeling Railways, on the one hand, and mines on the Pittsburgh & Lake Erie Railroad south of Pittsburgh, and on the Monongahela division, southwest branch, and Pittsburgh West End division of the Pennsylvania Railroad, on the other hand, subjected operators of coal mines on the first two named roads to undue prejudice and disadvantage to the extent that the percentage of cars furnished the mines as a whole on the latter roads was less than the percentage of cars furnished the mines on the other lines named. This case has since been reopened for further hearing. The southwest branch at that time was a part of the Pittsburgh division. It is now, and has been since March 1, 1920, operated as a part of the Monongahela division.

The Monongahela extends from Brownsville Junction, Pa., to Fairmont, W. Va., a distance of 68 miles, and in addition it has several branches. It has track connections with the Pennsylvania and Lake Erie at Brownsville Junction. Its capital stock is owned

jointly by those roads in equal shares but it is operated under its own charter. The Wheeling is now in the hands of a receiver. It extends from Morgantown, W. Va., to Brave, Pa., a distance of 26 miles, and connects with the Monongahela at Randall, W. Va. It also has a sidetrack connecting at both ends with its main line, which is used only for delivering loaded cars to the Monongahela. These roads use a portion of the main line of the Wheeling at Randall as an interchange track. Empty cars can not be delivered to the Wheeling when loads are awaiting delivery to that road by the Monongahela, or vice versa. The portion of the Wheeling from Morgantown to Randall is operated by electricity, for passenger service only. No coal-carrying equipment is owned by either the Monongahela or the Wheeling, and they are dependent upon the Pennsylvania and Lake Erie for car supply, although they do maintain their own motive power. The mines on the Wheeling are treated by the Monongahela, and in turn the mines on the Monongahela are treated by the Pennsylvania and Lake Erie, for purposes of car distribution, as one mine. In other words, the Wheeling orders cars from the Monongahela based on the aggregate orders placed with it by the mines, and the Monongahela likewise aggregates the orders from its mines with those from the Wheeling in placing orders for cars with the Lake Erie and Pennsylvania.

The Monongahela, for the purpose of estimating the requirements for the following day, endeavors to have the Wheeling orders at hand by 9 o'clock each morning for the following day's loading. The operators on the Monongahela each afternoon give their orders to that line for the following day, specifying whether Pennsylvania or Lake Erie equipment is desired. The chief car distributor for the Monongahela, who appeared as a witness for complainant, testified that during the period here considered the operators generally ordered their aggregate rating from the Monongahela. The Monongahela in turn each morning places with the Pennsylvania and Lake Erie an estimated order for its requirements for the following day, including assigned and unassigned cars for the mines on its line and those on the Wheeling. This estimated order is necessary so that the Pennsylvania and Lake Erie will have some knowledge, as early as possible, of the number of cars required for the following day. A supplemental corrected report, based upon orders from the mines, is placed each afternoon, which shows how many cars are actually required. This supplemental report was not submitted prior to December, 1920.

The central region of the Pennsylvania comprises four general superintendents' divisions, viz, the Western Pennsylvania, Northern, Lake, and Eastern Ohio, and is that portion of the line west of Renovo and Altoona, Pa., and east of Columbus and Mansfield, Ohio.

The Monongahela division, which is a part of the Western Pennsylvania division, extends from Duquesne, Pa., southward to the connection with the Monongahela. It is divided into two districts, known as the east and west districts. The east district is that portion of the line and branches from Greensburg, Pa., south to Fairchance, Pa., and the west district that portion, including branches, from South Duquesne, Pa., to Redstone Junction, Pa. This latter district was, prior to March 1, 1920, known as the southwest branch of the Pittsburgh division.

The general practice of the mines in the central region is to place with the car distributor at the close of the day's business, generally 4 p. m., a report in the prescribed form showing the number of cars they had on hand at 7 a. m., the number of cars received between 7 a. m. and 10 a. m., the number received after 10 a. m., for that day's business, the number of cars loaded, and the number of cars left over empty or partly loaded at the close of the day's business. In the majority of cases this information is given by telephone and confirmed in writing on the regular form.

The Pennsylvania endeavors to equalize the distribution of coal cars between its four main divisions and as between its Monongahela division and the Monongahela, and also attempts to maintain an equalized interchange with the latter road. These are the practices followed with respect to other dependent connections, that is, efforts are made to equalize between the dependent connection and the immediate district.

The mines on the Lake Erie are located on its Monongahela and Youghiogheny divisions. The Lake Erie supplies cars to the Monongahela from its Newell yard on the Monongahela division, 4.5 miles north of Brownsville Junction. It deals with the Monongahela and its other dependent connections on the basis of an equalized interchange. Several times during the period covered by the complaint the Lake Erie restricted the delivery of empty cars to the Monongahela in order to force a reasonably balanced interchange. Between March 1 and March 15 the Lake Erie delivered approximately 1,000 more cars to the Monongahela than it received back loaded, and during the period from January 20 to June 14, 1920, this excess was 1,379 cars.

The operators contend that the mines on the Monongahela and Wheeling are entitled to the same average percentage of commercial cars as the mines on the Lake Erie and Pennsylvania (central region) and that, irrespective from which line the dependent connections receive empty equipment, they should be permitted to load the coal out by either line, because by reason of the ownership of the Monongahela by the Pennsylvania and the Lake Erie it must be

treated as a part and parcel of those roads, and that under the law the mines on the Monongahela and Wheeling are on the Pennsylvania and Lake Erie so far as the distribution of coal cars is concerned. Under this theory the operators contend that if the Lake Erie, for example, should deliver a number of cars to the Monongahela, and such cars were loaded out by the Pennsylvania, equalization should not necessarily be made at Brownsville Junction, but at any junction at which the Pennsylvania and Lake Erie have interchange facilities. Even though this were true so far as the mines on the Monongahela are concerned, we know of no provision in the law which requires the Lake Erie to deliver empty coal cars to the mines on the Pennsylvania for loading out via that line or vice versa. While it is true that the stock of the Monongahela is owned jointly by the Pennsylvania and the Lake Erie, it is also true that the former is separately operated, and the obligation to interchange cars rests with it and its trunk-line connections. So far as the Wheeling is concerned these contentions could not be sound, since neither the Lake Erie nor the Pennsylvania has any financial interest therein.

Paragraph 12 of section 1 of the interstate commerce act makes it the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available does not equal the requirements of such mines it shall be the duty of such carrier to maintain and apply just and reasonable ratings of such mines, and to count each and every car furnished to or used by any such mine for transportation of coal against the mine. Under paragraph 15, of section 1, we have authority when in our opinion a shortage of equipment, congestion of traffic, or other emergency requiring immediate action, exists in any section of the country, either upon complaint or upon our own initiative without complaint, to suspend the operation of any or all rules, regulations, or practices then established with respect to car service for such time as we may determine. On March 2, 1920, by notice to carriers and shippers we recommended that until experience and careful study demonstrated that other rules would be more effective and beneficial, especially during the remainder of the early spring, the uniform rules contained in U. S. Railroad Administration Circular CS-31 (Revised), governing the rating of bituminous coal mines and distribution of cars to such mines, be continued in effect. By further notice to carriers and shippers dated April 15, 1920, we amended our notice dated March 2, 1920, so as to change rule 8 of said circular to provide as follows:

Private cars and cars placed for railroad fuel loading in accordance with the decisions of the Interstate Commerce Commission in *R. R. Com. of Ohio et al. v. H. V. Ry. Co.*, 12 I. C. C., 398, and *Traer v. Chicago & Alton R. R. Co. et al.*, 13 I. C. C., 451, will be designated as "assigned cars." All other cars will be designated as "unassigned cars."

By our service order No. 18, effective October 1, 1920, rule 8 was further modified by the addition of the following sentence:

Provided, that common carriers by railroad may not assign cars for their own fuel and fail to count such cars against the mine's distributive share unless the entire output of such mine is taken by such a carrier for a period of not less than six consecutive months.

In *R. R. Com. of Ohio v. H. V. Ry. Co.*, *supra*, we held that a carrier should give to the owner or lessee of private cars the use of such cars; and should also give to a coal company the foreign railway fuel cars consigned to it; but that such private and foreign railway fuel cars should, in the distribution of cars, be counted against the company to which delivered and such company should not be given, in addition to such delivery, a share of the system cars, except when the number of private and foreign railway fuel cars so delivered to it is less than its distributive share of the available cars, in which event it should be given only so many of the system cars as are necessary, when added to the number of private and foreign railway fuel cars assigned to it, to make up its distributive share of the total available cars, including system cars, and so-called private cars. In *Traer v. Chicago & Alton R. R. Co.*, *supra*, we followed the rule laid down in the *Hocking Valley case*, and stated that cars used by defendants upon their own lines for transportation of their own necessary fuel supply may be given in any numbers to the mine or mines from which such fuel supply is received, but if such mine or mines also ship commercial coal the fuel cars so supplied must be counted against the mine or mines.

In ordering cars neither the Monongahela nor the Wheeling distinguish between assigned or commercial cars. They do, however, give preference in the furnishing of cars to mines loading assigned cars. The Lake Erie purchases its fuel supply on the commercial basis and is not much concerned with assigned cars, except perhaps as such cars may be assigned for other roads. The Pennsylvania and Lake Erie before allotting any unassigned cars take out of the pool of cars available for coal loading sufficient cars to protect the assigned requirements of their own mines.

Cars delivered to mines on the Monongahela and Wheeling are counted against their distributive share, whether for loading as assigned cars or with commercial coal, whereas assigned cars on the Pennsylvania and Lake Erie are not counted against the distributive share of the mines receiving them. The operators contended that as-

signed cars should not be counted. It is the position of the Monongahela that since it orders all the cars requested by the operators there is no necessity for distinguishing between assigned and unassigned cars. If assigned cars were not counted against the distributive share of the mines on the Monongahela and Wheeling in periods of car shortage it would somewhat increase their percentage of commercial cars and correspondingly decrease the percentage of commercial cars available for mines on the Lake Erie and Pennsylvania. The record does not show for whom cars were assigned during this period. If for roads other than the Lake Erie and the Pennsylvania, and such foreign roads carded and furnished their own equipment for such loading, it was the practice, at least on the Pennsylvania, to deduct such cars from the total order placed by the Monongahela and to then deliver the commercial cars in about the same manner that cars were distributed to mines on its own rails. The record does not show whether the operators had contracted for the entire output of the mines loading assigned cars, or only for a portion thereof; or whether commercial cars were ordered in addition to the assigned cars even though the assigned cars furnished exceeded its distributive share. In the absence of these essential facts it is manifestly impossible to make a definite finding in this respect. A great deal of the difficulty would have been obviated had the Monongahela placed its orders with the Pennsylvania and the Lake Erie in the same manner as cars were ordered from it by the operators, that is, if it had distinguished between assigned and unassigned cars. As we view it, there was no obligation on the part of either the Pennsylvania or the Lake Erie to distribute cars to their dependent connections on a different basis than that upon which cars were ordered from them, even though their records might show the numbers of assigned cars which were included in the total order.

It also appears that the Monongahela placed empty coal cars furnished it for loading with coke, and that the cars so used were not charged by the Monongahela as coal cars. The record does not show to what extent this was done, but it possibly accounts for some of the discrepancies in the figures hereinafter referred to. Empty cars ordered by the Monongahela should be used for the purpose for which they were ordered.

During the period here considered the supply of coal cars was generally insufficient to meet the demands, with the result that shortages existed not only at the mines of the operators but also at the mines on the Pennsylvania and the Lake Erie. During the greater portion of the period operating conditions were abnormal, which is attested by the exercise by us of the emergency powers

granted under paragraph 15 of section 1 of the interstate commerce act in the issuance of various service orders later referred to.

Complainant's exhibits show that the Monongahela ordered from the Pennsylvania and Lake Erie, during the period covered by this complaint, 132,819 and 114,209 cars, respectively, and was furnished with 55,160.1 cars by the Pennsylvania and 58,394.6 cars by the Lake Erie, or 41 and 51.1 per cent of its orders. Of the total cars furnished by the Pennsylvania and the Lake Erie, 9,625 and 26,250, respectively, were assigned cars. The unassigned cars ordered from the Pennsylvania Railroad equaled 58.4 per cent of the total order and those ordered from the Lake Erie 41.6 per cent of the total order.

Exhibits filed by representatives of the Lake Erie and Pennsylvania, who appeared as witnesses for the complainant, show that the Monongahela ordered 117,356 cars from the Lake Erie and was furnished 60,207 cars, and ordered 124,073.7 cars from the Pennsylvania and was furnished 52,860.8 cars. The difference between the figures of the Monongahela and Lake Erie as to cars ordered is due, in part, to the fact that the Lake Erie figures represent the early morning situation, and the Monongahela figures the completed situation. No explanation was offered for the discrepancy between the Pennsylvania and Monongahela figures.

The Wheeling ordered from the Monongahela, according to the latter's records, 44,128 cars and was furnished 23,633 cars, or 53.6 per cent. It ordered 31,435 commercial cars and was furnished 10,940 cars, or 34.8 per cent. An exhibit filed by the receiver of the Wheeling, who appeared as a witness for the complainant, shows that that line ordered from the Monongahela 57,234 cars and received 23,042 cars, of which 10,101 were assigned cars. It also shows that the Wheeling received 729 private cars of the Peoples Gas Company, which is located upon the Wheeling. No report of the loading of these cars was made to the Monongahela, and they were not considered as a part of the distributive share of the Wheeling. The receiver for the Wheeling testified that each day he ordered cars based on the aggregate rating of the mines as determined from the sworn statements of the operators, less cars held over, but did not take mine disabilities, nor the fact that mines might order less than their rating, into consideration. These orders, however, were cut down by the Monongahela to the basis of the ratings determined by it, as the result of an investigation into the ratings of mines on its line south of Brownsville and those on the Wheeling. This explains to some extent the discrepancy between the Wheeling and Monongahela figures with respect to cars ordered.

The aggregate ratings of the Wheeling, determined from these sworn reports, and the ratings given it by the Monongahela, are as follows:

Month.	Actual aggregate rating.	Rating used by Monon- gahela.	Month.	Actual aggregate rating.	Rating used by Monon- gahela.
	<i>Cars.</i>	<i>Cars.</i>		<i>Cars.</i>	<i>Cars.</i>
March, 1920.....	245.07	242.9	August, 1920.....	208	192.4
April, 1920.....	285.27	171.6	September, 1920.....	242.94	192.4
May, 1920.....	262.26	193	October, 1920.....	257.54	192.4
June, 1920.....	283.63	192.9	November, 1920.....	261	192.4
July, 1920.....	213	192.4	December, 1920.....	279	192.4

Complainant contends that the change in the ratings of the mines on the Wheeling reduced the order for cars which the Monongahela placed with the Lake Erie and Pennsylvania by 14,969. Adding this number of cars to those actually ordered by the Monongahela after deducting assigned and private cars, and applying to the total so arrived at the respective above-mentioned percentages of unassigned cars ordered by the Monongahela from the Pennsylvania and Lake Erie, complainant shows that the Monongahela should have ordered 8,742 additional cars from the Pennsylvania, and 6,227 additional cars from the Lake Erie. Complainant then adds to the cars furnished by the Lake Erie to its own mines those furnished by the Lake Erie to the Monongahela for mines on its line and those on the Wheeling, and applies to the total the percentage of unassigned cars ordered by the Monongahela from the Lake Erie and shows that the Monongahela is short 19,469.3 unassigned cars. In the same manner it shows that the Monongahela is short from the Pennsylvania 17,134.5 unassigned cars, and that of the total shortage the Wheeling is entitled on a pro rata basis to 10,987.4 cars. We can not accept these figures as conclusive. They assume that the Wheeling was entitled to cars based on the full mine rating as shown on the sworn reports of the operators. The record shows, however, that in a number of instances the operators on the Wheeling ordered less than their rating as fixed by the Monongahela. Further, while this record is silent upon the point, it appears from our report in *Fairmont & Cleveland Coal Co. v. B. & O. R. R. Co.*, 62 I. C. C., 269, that at least one mine on the Monongahela is also served by the Baltimore & Ohio Railroad. In determining any question of discrimination in the matter of car supply against mines on the Monongahela, it would accordingly be necessary to take into consideration the number of cars which the Baltimore & Ohio furnished to this mine, as well as other mines which are served jointly by two or more carriers. This is particularly so when, as here, the record shows that the mines

on the Monongahela during this particular period generally ordered their full mine rating from the Monongahela, apparently without regard to the number of cars ordered from the other carrier. While the record does not show whether the Monongahela was warranted in reducing the ratings to the extent that it did, it does show that the average daily production of one mine on the Wheeling was less than 2.5 cars and the siding capacity of the mine 7 cars, although the mine was rated at 14 cars. In any event, it is not clear on what theory complainant would have us hold the Pennsylvania and Lake Erie liable for not furnishing their proper quotas of cars, when the order for such cars was not communicated to them.

From March 1 to December 31, 1920, mines on the Pennsylvania (central region) ordered a total of 1,713,803.1 cars and were furnished 1,190,258.8 cars, or 69.4 per cent. They ordered 1,200,471.5 commercial cars and received 588,359.2 cars or 49 per cent. The mines on the Lake Erie ordered a total of 162,132 cars and received 110,020 cars or 67.8 per cent. They ordered 158,401 commercial cars and received 106,289 or 67.1 per cent.

The Pennsylvania and Lake Erie concede that under paragraph 12 of section 1 of the interstate commerce act the duty is placed upon them to treat the mines on their dependent connections in the distribution of cars for the transportation of coal in the same manner and to the same extent as they treat mines located upon their own lines, and contend that they would have done so during this period but for conditions over which they had no control.

At the termination of Federal control, February 29, 1920, the open-top cars were widely dispersed, and it was practically impossible to immediately restore normal conditions under private operation.

At the end of March, 1920, the Pennsylvania was short in its distribution to the Monongahela by about 1,600 cars as compared with the Monongahela division, west district, of the Pennsylvania, with which division comparison is made for purposes of car distribution to the Monongahela. By April 10 this shortage had been overcome. Subsequently, due to labor troubles, which began April 13, 1920, shortages again developed which were also overcome by the end of August and by December 31, 1920, the Monongahela was approximately 7,200 cars over as compared with this division. During the period from March 1, 1920, to December 31, 1920, the Monongahela division was short 12,099 cars and the Monongahela was short 3,296 cars, in comparison with all districts in the central region. In other words, the Monongahela, as compared with the whole central region, had 94 per cent of its quota. The Monongahela division has a single-track connection with the Monongahela, and was more or less

congested throughout the entire period from March 1, 1920, to December, 1920. The situation was worse during the period from August until December. The principal difficulty was caused by a lack of motive power, which made it impossible to move the loads and empties offered. This congestion also resulted in the consumption of more time in the performance of specific work by the available motive power. During this period the cars awaiting delivery from the Monongahela at times reached a total of 1,200, while at the same time the Monongahela division had as many as 4,000 or 5,000 cars of its own to move, with but 8 or 10 engines available.

On behalf of the Pennsylvania it was testified that service order No. 10, effective from July 26, 1920, to October 27, 1920, was the greatest contributing factor in the creation of shortages at mines in the central region. By this order we authorized and directed various carriers, including the Pennsylvania Railroad Company—Western Lines, from coal mines on main and branch lines west of Latrobe, the Lake Erie and Monongahela, to give preference and priority in the supply of cars for and in the transportation of bituminous coal consigned to the Ore & Coal Exchange at any Lake Erie port for transshipment by water as a part of a pool or pools of lake-cargo or bunkering coal at any such port; and to place an embargo on the supply of cars for or the movement of all other bituminous coal to any other consignee or destination, with the proviso that after the mines had shipped their percentage as determined by our agent they might ship the remainder of the cars to which entitled on any day to any consignee or destinations. This order did not apply to coal loaded in cars furnished, placed, or assigned under any prior or subsequent orders from us. The cars required to be shipped under the order were considered to be on a commercial and not on an assigned basis. The Monongahela was required to ship but a small portion of its output to the Lakes. The first assessment against mines in the central region called for a daily total of 847 cars, and specified particular grades of coal which originated mostly west of Pittsburgh. One district west of Pittsburgh was assessed 60 per cent of its output, while various percentages were required to be shipped from the different districts. The Monongahela division of the Pennsylvania was required to ship but a small portion of its output. These allotments were later revised and a uniform allotment of 35 per cent was made. Because of large public-utility orders,¹ the Pennsylvania was not

¹ By service orders Nos. 9, 12, 16, and 21 we authorized all common carriers within the territory served by the defendants herein, under certain conditions, and, in order that public utilities which directly served the general public, and other public institutions, might be kept supplied with coal for current use, to place, furnish, and assign cars to coal mines for the transportation of such coal in addition to and without regard to the existing ratings and distributive shares of the mines upon said railroads. These various orders remained in force from July 13, 1920, to November 24, 1920.

furnishing its lake tonnage in sufficient volume and the assessment was increased to 40 per cent. This compelled the Pennsylvania to place in the districts loading lake coal sufficient cars to protect railroad fuel, public-utility orders, and the lake assessment, which necessitated keeping cars away from other districts so as to meet the requirements under our various orders, with the result that it had but few cars available for commercial distribution. This necessarily increased the supply of cars to mines in those districts with a resultant reduction in the supply accorded to other districts and is one of the reasons why the Monongahela was short to so great an extent in comparison with other portions of the central region. The public-utility orders fell heavier on the territory east of Pittsburgh.

It was further testified that if the Pennsylvania during the period of a few months had given the Monongahela the same distribution as the mines in the central region, no assigned cars would have been available for distribution to mines on the Monongahela division, west district. During September, October, November, and December the Pennsylvania furnished its own mines with 58.5, 44.7, 63.4, and 83.9 per cent of their orders, and to the Monongahela based on its orders, 31.4, 51.3, 51.3, and 100 per cent, respectively. The Lake Erie during this period, as will later appear, had a plentiful supply of cars; in fact, the Monongahela was not in a position at all times to accept all of the cars offered it. The natural inference is that had the Pennsylvania furnished more cars than it did, they could not have been handled by the Monongahela.

In behalf of the Lake Erie it was shown that up to the development of labor troubles on or about April 9, 1920, equality was maintained as between cars delivered to mines on its line and those delivered to the Monongahela. Prior to the labor troubles 16 yard crews, on an average, were stationed at Newell yard. On April 9 every man in train and engine service at that terminal left the property, and no assigned yard crew was stationed there until May 17 when one yard crew, consisting of one conductor and one brakeman, assisted by subordinate officials, was recruited. During the balance of May two crews were maintained. During June the forces were gradually augmented by the employment of men from various sections of the country, so that by July 1 there were 13 crews at that terminal. The crews were gradually built up until August 24 when the strike broke and a normal condition was reached. No road crews were operated from or to this terminal from April 9 to May 15, when the first crew entered the terminal. The work of building up the road crews was not as rapid as that of the yard crews, because of the greater territory over which they were required to travel. Further, there was a constant change in the per-

sonnel of these crews during this period. Prior to the inception of the strike, under a joint arrangement, the Lake Erie hauled empty cars into the Monongahela's yard at Big Meadow, about 5.5 miles south of Brownsville Junction, and the Monongahela handled certain cars from Big Meadow to Newell yard with their own crews, to avoid congestion at Brownsville Junction. During the strike period, however, the Monongahela declined to permit its crews to go over the rails of the Lake Erie, and employees of the Lake Erie refused to go into the Newell yard. The natural result was that the comparatively few cars that could be placed were placed at mines on the Lake Erie. During September and October, the Lake Erie furnished the Monongahela with 104 and 100 per cent, respectively, of its orders for cars. During the latter part of October, all of November, and the first half of December, 1920, the Monongahela, due to defective motive power, was unable to accept all of the empties offered by the Lake Erie, with the obvious result that the percentage of cars furnished by the Lake Erie was less than that furnished to mines on the latter line. Commencing with September the Lake Erie had a plentiful supply of empty coal cars. In fact, some such cars were delivered to the New York Central and Baltimore & Ohio Railroads during November and December in order to meet demands on those lines. During November the Monongahela had but 5 of its 42 freight engines in service, a number of them having been shopped by one of our inspectors, and both the Lake Erie and Pennsylvania loaned motive power to the Monongahela although they themselves were pressed for such power. The Monongahela frequently during this time requested the Lake Erie to withhold deliveries because of this situation. The position of the Lake Erie is that the labor troubles and abnormal condition on the Monongahela more than account for the relative difference between the car supply accorded its own mines and those on the Wheeling.

The fact that the Monongahela and the Wheeling did not secure cars from the Pennsylvania and Lake Erie on the same percentage basis as mines on their respective roads is conceded by the defendants. They contend, however, that by reason of the abnormal conditions existing during the period in question and which have heretofore been adverted to, it was physically impossible to accord mines on the Monongahela and Wheeling equal treatment with their own mines. That these conditions did exist there is no doubt. Since January 1, 1921, defendants have been willing to place cars at the mines on the Monongahela and Wheeling in excess of their share pro rata, in order to make up the shortages which existed at the end of the year. Due, however, to the general business depression and the consequent lack of demand for coal, the operators are not willing

to have the shortage made up at this time. It is their position that the shortage should be made up during the next period of car shortage or that the defendants respond in damages for failure to equalize the distribution. Ordinarily, the carriers can adjust shortages within a comparatively short period, and certainly not to exceed 30 days. This would seem to be ample time under most circumstances.

We have carefully reviewed the record in the light of exceptions filed to the report proposed by the examiners and while it leaves no doubt that discrimination did exist in the distribution of empty coal cars against the mines on the Monongahela and Wheeling in favor of mines on the Pennsylvania and Lake Erie during the period here in question, we are of opinion and find that the discrimination was not such as to constitute undue prejudice and that the practices of the defendants during this period under the peculiar circumstances and conditions here shown to exist were not unreasonable.

The complaint will be dismissed.

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No. 11303.¹

FARRIS HARDWOOD LUMBER COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, AND NASHVILLE,
CHATTANOOGA & ST. LOUIS RAILWAY.

Submitted March 23, 1921. Decided March 18, 1922.

Rates during Federal control and present interstate rates on logs, in carloads, from stations on the Nashville, Chattanooga & St. Louis and Tennessee Central to Nashville, Tenn., found not unreasonable or unduly prejudicial. Complaints dismissed.

T. M. Henderson for complainants.

John F. Finerty, Royal McKenna, and W. K. Vandiver for director general, as agent.

N. W. Proctor for defendants in No. 11303.

M. E. Newell for Tennessee Central Railroad and its receivers.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainants to the reports proposed by the examiner and the cases were orally argued.

Complainants are Farris Hardwood Lumber Company and John B. Ransom & Company, corporations manufacturing lumber at Nashville, Tenn. In No. 11303 they allege that interstate and intrastate rates charged on numerous shipments to Nashville of logs, in carloads, from stations on the Nashville, Chattanooga & St. Louis during Federal control were, and that the present interstate rates are, unreasonable and unduly prejudicial as compared with lower rates between certain other points on its line. In No. 11402 they allege that the intrastate rates charged on shipments of logs, in carloads, from stations on the Tennessee Central to Nashville during the period of Federal control were, and that the present interstate rates are, unreasonable and unduly prejudicial as compared with lower rates applying between local points on that line. Violation of the long-and-short-haul provision of the fourth section of the act is also alleged. We are asked to award reparation and to pre-

¹ This report also embraces No. 11402, Same v. Director General, as Agent, and Tennessee Central Railroad Company.

scribe reasonable interstate rates. The Railroad and Public Utilities Commission of the State of Tennessee, and numerous industries operating woodworking establishments at points to which the alleged preferential rates applied and apply, filed intervening petitions opposing the complaint in No. 11303, but the interveners did not appear at the hearing. Rates will be stated in cents per 100 pounds and do not include the general increase of 1920.

RATES OF THE NASHVILLE, CHATTANOOGA & ST. LOUIS.

In 1914 the then Tennessee Railroad Commission considered a complaint of the National Lumbermen's Club with respect to the intrastate rates here assailed, except that they had not then been increased by the Director General of Railroads. It found that the rates were not unreasonable or unduly prejudicial and dismissed the complaint. The Tennessee Commission alleges that complainants' sole object in the present case "is to have those orders set aside and annulled," and to secure reparation which the laws of the State of Tennessee do not empower that commission to award.

Traffic from certain branch lines and divisions of this carrier, hereinafter called the N. C. & St. L., which extend into Kentucky and Alabama is interstate, as is traffic from points on the Sequatchie Valley branch, connecting near Chattanooga, Tenn., with the Chattanooga-Nashville main line, which extends through a portion of Alabama and Georgia. Of the entire 1,247 miles, excluding sidings, operated by this defendant approximately 915 miles are in Tennessee. The shortest interstate haul was from Stevenson, Ala., 113 miles from Nashville. The average haul of 833 shipments referred to in the original complaint was 32 miles. Reparation is asked on more than 1,100 shipments, only 13 of which moved interstate. One complainant owns a timber tract in eastern Tennessee which will probably produce 1,000 carloads of logs, and is therefore interested in the establishment of reasonable interstate rates. Defendants direct attention to the comparatively small interstate movement and insist that complainants are seeking indirectly to secure future reductions in "intrastate rates approved by the Tennessee Railroad Commission."

The N. C. & St. L. publishes specific commodity rates on logs to Nashville from numerous stations on its line and from certain stations on the lines of connections east of Chattanooga; also a distance scale of commodity rates applicable, if lower, in lieu of the specific rates, and also applicable to Nashville from points west of Chattanooga from which no specific rates are published. Apparently the rates under the distance scale are, with few exceptions,

lower than the specific rates. This scale and that asked by complainants are shown in the following table:

Distances.	Scale of rates assailed.	Scale of rates asked.	Distances.	Scale of rates assailed.	Scale of rates asked.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
5 miles and less.....	2.5	2.25	115 miles and over 110 miles....	9.5	5.6
10 miles and over 5 miles.....	3	2.25	120 miles and over 115 miles....	9.5	5.6
15 miles and over 10 miles.....	3	2.5	125 miles and over 120 miles....	9.5	6
20 miles and over 15 miles.....	4	2.5	130 miles and over 125 miles....	9.5	6
25 miles and over 20 miles.....	4.5	2.9	135 miles and over 130 miles....	9.5	6.25
30 miles and over 25 miles.....	5	2.9	140 miles and over 135 miles....	9.5	6.25
35 miles and over 30 miles.....	5.5	3.1	145 miles and over 140 miles....	9.5	6.6
40 miles and over 35 miles.....	5.5	3.1	150 miles and over 145 miles..	9.5	6.6
45 miles and over 40 miles.....	5.5	3.5	155 miles and over 150 miles....	9.5	6.9
50 miles and over 45 miles.....	5.5	3.5	160 miles and over 155 miles....	9.5	6.9
55 miles and over 50 miles.....	6.5	3.75	165 miles and over 160 miles....	10	7.25
60 miles and over 55 miles.....	6.5	3.75	170 miles and over 165 miles....	10	7.25
65 miles and over 60 miles.....	7	4.1	175 miles and over 170 miles....	10	7.5
70 miles and over 65 miles.....	7	4.1	180 miles and over 175 miles....	10	7.5
75 miles and over 70 miles.....	7.5	4.4	185 miles and over 180 miles....	10.5	7.9
80 miles and over 75 miles.....	7.5	4.4	190 miles and over 185 miles....	10.5	7.9
85 miles and over 80 miles.....	8	4.75	195 miles and over 190 miles....	10.5	8.1
90 miles and over 85 miles.....	8	4.75	200 miles and over 195 miles....	11.5	8.1
95 miles and over 90 miles.....	9	5	210 miles and over 200 miles..	11.5	.....
100 miles and over 95 miles....	9	5	220 miles and over 210 miles....	12	.....
105 miles and over 100 miles...	9	5.4	230 miles and over 220 miles....	12.5	.....
110 miles and over 105 miles...	9	5.4	300 miles and over 230 miles....	12.5	.....

The alleged preferential rates are distance rates but are not included in the above table as the mileage groupings differ somewhat from those of the scales shown. For distances of 15 miles and under they are the same as the rates assailed, but for distances in excess thereof, with few exceptions, they are lower—2.5 cents in a few instances, though generally in amounts varying from 0.5 to 2 cents. These rates, hereinafter referred to as the local scale, apply between local stations west of Chattanooga, from local stations to certain junction points, from certain junction points to local stations west of Chattanooga, and between certain other points unnecessary to mention. Complainants testify that the woodworking establishments located at points accorded the local scale are their principal competitors in the purchase of logs; and, as only 1 pound of lumber is produced from 3 pounds of logs, any advantage enjoyed by these competitors in the log rates reflects an advantage of three times that amount in the cost of the manufactured lumber.

Defendants' witness testified that the local scale was never intended to represent maximum reasonable charges for the transportation of logs from and to local stations, but was "predicated upon a knowledge that the converted products would move over the line of necessity," and that those rates are "neither more nor less than proportional rates." According to defendants' exhibits the average rate on outbound shipments of lumber from Nashville to 49 destinations is 35.9 cents, as contrasted with rates ranging from 37.5 to 44.4 cents to the same destinations from specified points to which the local scale

applies. Based on the average haul of complainants' shipments the Nashville mills have a material advantage over these competitive industries in the aggregate in-and-out rates. Consideration in this proceeding of the outbound lumber rates in connection with the log rates is strenuously objected to by complainants, but further discussion of this issue appears to be unnecessary as the rates asked are lower than the local scale and it is patent from the record that complainants' real complaint is as to the reasonableness of the rates assailed rather than undue prejudice. This is illustrated by the following question and answer:

Q. Would you be benefited if the commission, for instance, saw fit not to disturb the level of your rate, would you be benefited if your competitors' rates were increased?

A. Well, if we were benefited it would be to such a small extent that it wouldn't amount to much.

The tonnage of forest products originating on the N., C. & St. L. in the year 1919, of which Nashville received 20.7 per cent, exceeded that of any year since 1904.

The Southern maintains a distance scale of intrastate rates for application on logs within certain States, including Tennessee. This scale is published per car of 40,000 pounds, "excess in proportion." Complainants ask rates based on this scale to a per-car basis of 30,000 pounds, the minimum applicable under the rates assailed. It is stated that this scale was selected because the Southern has a substantial mileage in Tennessee and has voluntarily applied those rates for a number of years; because logs originating on the Southern are principally hardwood, and because operating conditions on the N., C. & St. L., taken as a whole, are not less favorable than on the Southern.

In support of their claim of unreasonableness complainants introduced exhibits of approximately 45 different scales of log rates applicable in different portions of the South, accompanied by statistical data pertaining to the N., C. & St. L. and the lines of the carriers whose rates are referred to taken from reports for the year ended December 31, 1918. From these it appears that conditions respecting operation and traffic density, so far as they may be measured by this comparative showing, are more favorable on the N., C. & St. L. than on some of the other lines. Certain of the exhibited scales are net rate scales, but the greater portion apply either as flat rates or as gross rates, and while a number are restricted to intrastate traffic and some are the maximum rates prescribed by State commissions plus the 25 per cent advance under General Order No. 28 of the director general, all, with one exception, are lower than the basis of the rates assailed and a few are lower than the scale asked.

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The rates referred to include those approved in *Chattanooga Log Rates*, 30 I. C. C., 36, and 35 I. C. C., 163; and *Pierpont Mfg. Co. v. S. Ry. Co.*, 50 I. C. C., 81; the gross rates attacked but found not unreasonable in *May Bros. v. Y. & M. V. R. R. Co.*, 26 I. C. C., 323; and the gross rates prescribed in *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 38 I. C. C., 432, from points in Louisiana, Arkansas, and Oklahoma to Memphis, Tenn.; all increased by 25 per cent, and with a deduction of 1 cent in the rates approved in the last-named case on account of bridge toll for the Mississippi River crossing. The following table compares for certain distances (1) the rates assailed and (2) those approved in the *Vandenboom-Stimson case*, after allowance for the additions and deductions noted:

	Rate assailed.	Rate approved.
50 miles-----	5.5 cents	5 cents.
100 miles-----	9 cents	6.5 cents.
150 miles-----	9.5 cents	7.5 cents.
200 miles-----	11.5 cents	9 cents.
250 miles-----	12.5 cents	10 cents.

Prior to October 21, 1908, distance scales of both gross and net rates were maintained, the gross rates originally charged being reduced to the net-rate basis when the manufactured product or its equivalent moved out of Nashville over the N., C. & St. L. On that date a flat scale was substituted which was lower than the former gross rates and slightly higher than the former net rates. This scale, increased 25 per cent by the director general, is the scale assailed. The average of the old net rates shown in one of defendants' exhibits, from 39 points of origin to Nashville, 3.5 to 145 miles, was 4.42 cents, while the average of the substituted flat scale for the same distances was 4.93 cents, an average increase of 0.51 cent per 100 pounds.

In defense of the rates assailed defendants rely in great measure on the history of the rates, particularly the dismissal of the complaint filed before the Tennessee Commission and the subsequent action of the railroad administration in denying an application of the Nashville Lumbermen's Club for a reduction, it being pointed out that the rates asked are lower than those found reasonable by the State commission in 1914. Since that time there has been a marked increase in the value of logs and in railroad operating expenses. The ratio of the N., C. & St. L. operating expenses to operating revenue for the year ended June 30, 1900, is shown as 62.78 per cent as compared with 72.12 per cent for the year ended December 31, 1916, and 92.21 per cent for the year ended December 31, 1919.

Defendants described the operations required in handling log shipments at Nashville, pointing out that complainants' plants are 2 and 7 miles, respectively, from the main terminal yards and that separate switching movements of seven different engines and crews are required to deliver a loaded car to those industries. In *Nashville Switching*, 40 I. C. C., 474, decided June 30, 1916, we found that \$5 per car was a reasonable charge for switching by the Nashville Terminal Company. The average operating cost per loaded car, according to the carriers' showing in that case, was \$4.47. Adding to this sum an estimated increase of 81.3 per cent, and contrasting the resulting aggregate cost per car of \$8.10 with the sum of \$1.78, the estimated maximum cost per car of switching at local stations, defendants contend that the rates to Nashville should properly be higher than the local scale in amounts proportionate to the difference of \$6.32 per car in delivery costs, or based on average loading of complainants' shipments, approximately 1.5 to 2 cents per 100 pounds.

In *Paducah Cooperage Co. v. N., C. & St. L. Ry.*, 22 I. C. C., 226, we found that the rates of the N., C. & St. L. on stave and heading bolts from local points on its line to Paducah, Ky., were unreasonable to the extent that they exceeded rates on the same commodities for corresponding distances between local points on its line. There is a striking similarity in the situations presented, also in the evidence of the defendants in these respective cases. We said, in that case, "there is nothing in the record which indicates that the carriage of bolts to Paducah is more expensive than the carriage of bolts for a similar distance to a local point." Defendants urge that the cases are to be distinguished in that the present record establishes a substantially greater cost of delivering logs at Nashville than at points to which the lower scale of rates applies. The testimony offered is in many respects unsatisfactory and does not warrant a definite finding as to the extent to which the cost of delivering shipments of logs at Nashville exceeds the cost of delivery at local stations, but it is clear that the expense is substantially greater.

Based upon average weights and applicable rates from 42 points set forth in the original complaint, defendants show an aggregate average revenue per car of \$25.83 on all the shipments there included, and this is compared with the average revenue per car on several other commodities if shipped from these same points to Nashville at the applicable rates and the average car loading for the month of April, 1920, from specified points on the line from which these commodities are shipped. This average is \$37.42 on crushed stone, \$31.98 on sand, \$30.45 on gravel, and \$35.91 on lime. As contrasted with the average revenue per car on the same shipments of complainants,

defendants also show that the average revenue per car on brick, coal, and cement, based on actual movement for the calendar year 1919 from and to other equidistant points, is materially higher. The relative value of logs and of the commodities mentioned is not disclosed. The relatively higher earnings per car on these other commodities are in part attributable to materially heavier loading. Complainants have no objection to a 40,000-pound minimum if cars are furnished that can be loaded to that weight.

The record shows that 15.1 per cent of the traffic of the N., C. & St. L. in 1919 consisted of products of the forest, and because the section generally traversed by its line is nonagricultural it "is keenly interested in the continued production at its stations of forest products." The lumber mills and woodworking establishments located at its local stations have rapidly decreased in number. Circulars issued by the Department of Agriculture direct attention to the waning hardwood supply in the Appalachian forests. This defendant asserts that "so far as could be done properly," it "has maintained a consistent policy of conservative retardation of the movement of forest products from its territory * * *." A large portion of the territory served by it is mountainous and sparsely settled and there are many branch lines which depend principally upon forest products for their tonnage. The grade on the main line is as high as 107 feet to the mile and on the Tracy City branch over 200 feet. In *Rates on Lumber from Southern Points*, 34 I. C. C., 652, and other cases, we have recognized that operating conditions on the N., C. & St. L. are less favorable than on certain other southern lines.

Defendants contend that, taken as a whole, "the physical characteristics of the Nashville, Chattanooga & St. Louis Railway are * * * more severe than any other railway of equal mileage in the Southern territory"; that the log scales of the Southern and the exhibited scales of other southern carriers were primarily fixed to clear the land for agriculture and to take care of the movement of pine logs; and that pine logs are of lower value than hardwood logs, move in substantially greater volume, and by reason of intense competition between the numerous lines in the South, have been accorded a low basis of rates. They refer to rates applying to Nashville from stations on the Louisville & Nashville and Tennessee Central to Johnson City, Tenn., from Carolina, Clinchfield & Ohio stations, and between certain points on the Norfolk & Western; all of which lines operate in the Appalachian hardwood district. The exhibited gross rates of the three first-named carriers and some of the rates of the Norfolk & Western are higher than the rates assailed. Defendants also show that the rates assailed are on the same level for corre-

sponding distances as the rates of the N. C. & St. L. to Chattanooga and Memphis, Tenn., Paducah, Ky., and Huntsville and Gadsden, Ala., and certain other points.

RATES OF THE TENNESSEE CENTRAL.

The eastern division of the main line of the Tennessee Central, hereinafter called the Central, extends from Nashville to Harri-man, Tenn., 165.8 miles, and the western division extends north-westerly from Nashville to Hopkinsville, Ky., 85 miles. Hopkinsville is approximately 15 miles north of the Kentucky-Tennessee State line. The only interstate rates assailed in No. 11402 are those from stations in Kentucky southeast of Hopkinsville, from which complainants have made no shipments.

A system of gross and net rates on logs is maintained from local points to Nashville and other specified junction points and also between local points, the gross rates originally charged being reduced to the net-rate basis when the manufactured product is shipped out over the Central in the proportion of 1 pound of products to each 3 pounds of logs. These rates are not restricted to intrastate application, but in a tariff so restricted a scale of distance rates is provided between local stations on logs "for manufacturing purposes." The following table, taken from exhibits introduced by complainants, shows (1) gross rates to Nashville from eastern-division main-line stations, (2) net rates to Nashville from eastern-division main-line stations, (3) net rates to Nashville from western-division main-line stations, and (4) distance rates between local stations:

	Gross rates.	Net rates from eastern division.	Net rates from western division.	Distance rates.
	Cents.	Cents.	Cents.	Cents.
5 miles and under.....	2.5	2.5	2.5	2
10 miles and over 5 miles.....	3	3	3	2.5
15 miles and over 10 miles.....	3.5	3.5	3.5	2.5
20 miles and over 15 miles.....	4	4	3	2.5
25 miles and over 20 miles.....	4.5	4.5	4	3
30 miles and over 25 miles.....	4.5	4.5	4	3
35 miles and over 30 miles.....	7.5	5	4	3
40 miles and over 35 miles.....	7.5	5.5	4.5	3
45 miles and over 40 miles.....	7.5	5.5	4.5	3.5
50 miles and over 45 miles.....	8	5.5	4.5	3.5
55 miles and over 50 miles.....	10.5	6	4.5	4
60 miles and over 55 miles.....	10.5	6	5	4
65 miles and over 60 miles.....	10.5	6.5	5	4
70 miles and over 65 miles.....	10.5	6.5	5	4.5
75 miles and over 70 miles.....	10.5	6.5	5	4.5
80 miles and over 75 miles.....	10.5	6.5	5	4.5
85 miles and over 80 miles.....	10.5	7	5	4.5
90 miles and over 85 miles.....	12	7	.....	4.5
95 miles and over 90 miles.....	12	7	.....	5
100 miles and over 95 miles.....	12	7	.....	5
110 miles and over 100 miles.....	12.5	7.5	.....	5.5
120 miles and over 110 miles.....	12.5	8	.....	5.5
130 miles and over 120 miles.....	12.5	8	.....	6
140 miles and over 130 miles.....	12.5	8.5	.....	6.5
150 miles and over 140 miles.....	12.5	9	.....	6.5

The gross rates from the eastern division are not published as distance rates and the exhibited scale, arranged by complainants for comparative purposes, is based upon the rates and distances to Nashville from specific stations on that division. The gross rates from western-division stations are on a somewhat lower basis, due apparently to competitive influences, but consideration of the rates shown from the eastern division will be sufficient for the purposes of this report. It will be observed that, for distances of approximately 30 miles and under, these gross rates are on the same level as the net rates. For greater distances they grade up to the lumber rates, the latter generally applying for hauls in excess of 100 miles.

The record shows that the products from complainants' shipments did not move out of Nashville over the Central, but it is complainants' contention that, as the roads were operated as a unit while under Federal control, the net scale should nevertheless have been applied. Moreover, they contend that the cost of moving logs from local points on the Central to Nashville is no greater than the cost of moving them corresponding distances between local points, and ask for the establishment of a scale of interstate rates not higher than the scale applying between local stations and for reparation on intrastate shipments to the basis of that scale.

Complainants compare the rates assailed with the log rates and scales of numerous other carriers applying in southern territory. The scale applying between local points on the Central closely approximates the Tennessee intrastate scale of the Southern, and is only slightly lower than the interstate scale applying between certain stations of that carrier. Some of the carriers whose rates are referred to maintain a system of gross and net rates, while others do not. The gross rates corresponding to the compared net rates are not in each instance disclosed, but it appears that the level of the gross rates on the eastern division is higher than that of any of the gross rates referred to; that with possibly one or two exceptions, the net scale applying from points on the eastern division is higher than the level of any of the compared net scales and higher than a few of the gross rates; and that some of the scales referred to are lower than the scale complainants ask to have established. A number of the rates apply only intrastate and some are the rates prescribed by State commissions, plus the 25 per cent increase under General Order No. 28. The transportation conditions are admittedly less favorable on the Central than on the lines of some of the carriers whose rates are mentioned, including the Southern Railway in Tennessee.

The rates referred to also include rates approved in *Chattanooga Log Rates, supra*, and *Pierpont Mfg. Co. v. S. Ry. Co., supra*, the gross rates attacked but found not unreasonable in *May Bros. v. Y. &*

M. V. R. R. Co., supra, and the gross rates prescribed in *Vandenboom-Stimson Lumber Co. v. St. L., I. M. & S. Ry. Co., supra*, all increased by 25 per cent. Allowing for this increase and deducting the bridge toll for the Mississippi River crossing, the scale approved in the last-named case is higher than the net scale applying from western-division main-line points to Nashville, and is only slightly lower in its general level than the net scale applying from eastern-division main-line points.

To Louisville, Ky., a representative destination, the carload rate on lumber from Nashville is 11.5 cents, while from Baxter, Tenn., a representative milling point to which the alleged preferential scale of rates on logs applies, it is 21.5 cents. Nashville mills have a very material advantage over the mills at local points in the aggregate transportation cost covering the movement of logs inbound and lumber outbound. It is obvious that the relative aggregate adjustment of these rates is not controlling in this proceeding, in which the lumber rates from the milling points and, with the few exceptions noted, interstate rates to the milling point are not before us.

Defendants' witness testified that in effecting delivery at Nashville more expensive switching is entailed and greater per diem charges paid than in effecting delivery at local points, and that there is consequently a material difference in the character and extent of the service. The record discloses that the plant of one of complainants is located on a connecting line, but what switching charges, if any, are absorbed by the Central on shipments delivered at Nashville by its connections does not appear. It would seem that the Central's assurance of receiving an outbound haul on the lumber from mills at local stations exercised an influence in determining the level of those rates.

The log rates of the Central were readjusted in 1915, but for many years prior thereto no substantial changes were made. The readjustment, while causing some advances, also effected reductions and did not disturb the general level. The rates resulting therefrom, increased June 25, 1918, are the rates assailed. In 1914, complainants filed a complaint before the Tennessee commission seeking a reduction in the intrastate rates now under consideration. Upon complainants' request that complaint was dismissed, the financial condition of the Central being one of the reasons assigned for the action taken. The greatly increased value of lumber in recent years is emphasized and the defendants' witness testified that the Central now needs, and since its early history has needed, additional revenue; that its traffic is to a considerable extent low grade, a large part consisting of forest products, coal, and coke; that agriculture has not progressed in the lumber section; and that as the lumber tonnage available for future revenues is diminishing, any reduction

in its revenues on forest products might be seriously felt. Exhibits of record show that for the year ended December 31, 1918, the ratio of operating expenses to operating revenues of the Central was 90.06 per cent; that this ratio was exceeded by only 2 of 17 other carriers whose rates are referred to in this record for comparative purposes; and that for the year ended December 31, 1919, the ratio was 113.5 per cent. The Central has been in the hands of a receiver since 1912.

The record does not establish the alleged violation of the fourth section of the act.

We find that the rates assailed were not, and that the present interstate rates are not, unreasonable or unduly prejudicial. The complaints will be dismissed.

68 L. C. C.

No. 12218.

EMPIRE REFINERIES, INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT, AND ATCHISON,
TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted August 1, 1921. Decided March 18, 1922.

Rates charged on fuel oil, in tank-car loads, from Hutchinson, Kans., to Ponca City, Okla., and from Arkansas City, Kans., to Hutchinson, on a tank-car load of fuel oil originating at Ponca City, Okla., found unreasonable. Reparation awarded. Reasonable maximum rate prescribed for the future.

A. C. Holmes and Warren T. Spies for complainant.

H. L. McCracken, T. J. Norton, and F. E. Andrews for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner. Our conclusions differ somewhat from those recommended by him.

Complainant, a corporation refining crude petroleum, alleges that the rates charged by defendants on five tank-car loads of fuel oil shipped in March and April, 1919, one from Ponca City, Okla., to Hutchinson, Kans., and four from Hutchinson to Ponca City, were unreasonable and unduly prejudicial, and that one of the rates charged was illegal. The prayer is for reparation. Rates will be stated in cents per 100 pounds.

The shipment from Ponca City weighed 59,437 pounds and moved over the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe. It was originally billed to Arkansas City, Kans., and after placement for unloading there was rejected and reconsigned to Hutchinson. The applicable distance commodity rate of 9.5 cents, which is not assailed, was collected for the movement to Arkansas City. For the movement beyond, 111 miles, charges of \$210.06, including a reconsignment charge of \$5, not in dispute, were collected at a rate of 34.5 cents, equivalent to the fifth-class distance rate in effect June 24, 1918, for 111 miles, plus 4.5 cents, the flat increase made by the Director General of Railroads in lieu of the 25 per cent increase prescribed in his General Order No. 28.

Fuel oil was, and is, rated fifth class in the governing western classification. By exceptions to that classification provision was made that class rates would not apply on petroleum and its products, including fuel oil, when classified fifth class and originating at or destined to points in Oklahoma. Therefore, complainant contends that the applicable rate was 14.5 cents, a distance commodity rate which defendants maintained on fuel oil from points in Oklahoma to interstate destinations. The tariff containing the rate charged was not governed by the classification exceptions; and the 14.5-cent rate applied only from Oklahoma producing points and not from Arkansas City. Complainant's contention is not sustained. The rate charged was applicable.

This rate is compared with distance commodity rates on fuel oil of 12 cents, applicable on Kansas intrastate traffic for the distance between Arkansas City and Hutchinson; 14.5 cents from Ponca City to Hutchinson, 136 miles, via Arkansas City, but not applicable on shipments rejected and reconsigned after placement at original destination; and 16.5 cents from Cushing, Okla., to Topeka, Kans., 304 miles. The rate of 34.5 cents yielded earnings of 62.2 mills per ton-mile and \$1.847 per car-mile. A rate of 14.5 cents would have yielded 27.1 mills and 77.65 cents, respectively.

The four shipments from Hutchinson to Ponca City averaged 59,970 pounds and had been shipped originally by complainant from Ponca City. The consignee at Hutchinson refused to accept delivery and they were returned to Ponca City, over the Santa Fe, 136 miles. Charges were collected for this return movement at the applicable commodity rate of 30.5 cents for 136 miles, under a distance scale maintained only from Hutchinson. Complainant compares this rate with the commodity rate of 14.5 cents on fuel oil northbound between these points, and a distance commodity rate of 14.5 cents on crude and fuel oils applicable to one-line hauls for distances of 140 and over 110 miles from certain points in southeastern Kansas to Oklahoma points. The second comparison is particularly stressed. The rate charged yielded earnings of 44.85 mills per ton-mile and \$1.345 per car-mile. The value of fuel oil on May 7, 1919, was about \$5.78 per ton.

Whether any fuel oil moves on the distance rate from southeastern Kansas points to Oklahoma points is not shown. By far the greater bulk of the oil traffic appears to move from, rather than to, points in Oklahoma. During the month of September, 1920, for example, the Santa Fe moved interstate 2,840 cars of refined oil northbound from, and only 53 cars southbound to, Oklahoma points; and during the same period the movement of crude oil southbound was approximately 1.4 per cent of the movement northbound.

We find that the rates assailed were, are, and for the future will be, unreasonable to the extent that the respective rates from Arkansas City to Hutchinson, and from Hutchinson to Ponca City, exceeded 14.5 cents per 100 pounds, subject to the general increase authorized by us on July 29, 1920; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges collected and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$502.68, with interest.

An appropriate order will be entered.

68 I. C. C.

No. 11417.¹

NORTHWEST STEEL COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, ET AL.

Submitted June 24, 1921. Decided March 18, 1922.

Charges on steam turbines from Schenectady, N. Y., and Trenton, N. J., to Portland, Oreg., and Seattle, Wash., found illegal. Refund required and defendants directed to clarify their tariffs. Complaint dismissed.

Joseph N. Teal, William C. McCulloch, and J. H. Lothrop for complainants in No. 11417.

Richmond Moot for complainant in No. 11911.

W. A. Robbins, Paul P. Farrens, H. A. Scandrett, J. M. Souby, John F. Finerty, Royal T. McKenna, and Charles A. Hart for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainants to the separate reports proposed by the examiners in these cases. Both will be disposed of in one report. No. 11911 was orally argued before us. Our conclusions differ from those recommended by the examiners.

Complainants in No. 11417 are the Northwest Steel Company, a corporation engaged in iron and steel fabrication and shipbuilding at Portland, Oreg., and the Portland Traffic & Transportation Association. Complainant in No. 11911 is the General Electric Company, a corporation manufacturing electrical machinery and turbines at Schenectady, N. Y.

By complaints seasonably filed they allege that the charges collected by defendants on 46 carloads of marine steam-turbine engines, shipped from Trenton, N. J., and Schenectady to Portland between April 13, 1918, and April 1, 1919, were illegal, unreasonable, and in violation of the aggregate-of-intermediate-rates provision of the fourth section of the interstate commerce act; and that the charges collected on six steam turbines, with gears, in carloads, shipped

¹ This report also embraces No. 11911, General Electric Company v. Director General, as Agent, New York Central Railroad Company, et al.

from Schenectady to Seattle, Wash., between September 20 and October 29, 1918, were illegal, unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the same provision of the fourth section. We are asked in both cases to award reparation and in No. 11911 to prescribe certain rates on steam turbines for the future.

The shipments moved over defendants' lines and charges thereon were assessed at the joint transcontinental class-A rates which were \$1.92 prior to June 25, 1918, and \$2.40 on and after that date, applicable on—

Machinery and Machines—

Engines, Steam or Internal Combustion, N. O. I. B. N.

governed by the western classification. Complainants contend that the rates applicable were lower combinations.

The transcontinental tariff provided that if the aggregate of intermediate rates by the route over which shipments move, wherever found, makes less than the joint rates contained therein, such lower combination should be applied; and named on certain classes of machines and machinery commodity rates of \$1.56, prior to June 25, 1918, and \$1.95 thereafter, from the points of origin to Fairview and Image, Wash., 15.4 and 15.5 miles, respectively, east of Portland, and to Covington, Wash., a short distance south of Seattle. The local class-A rates from Fairview and Image to Portland were 8 cents prior to June 25, 1918, and 12.5 cents thereafter; and the local class-A rate from Covington to Seattle on and after June 25, 1918, was 14 cents. The combinations on which the claims for reparation are based were \$1.64 before and \$2.075 on and after June 25, 1918, to Portland, and \$2.09 to Seattle.

The commodity rate of \$1.95, used as a factor in constructing these combinations, applied on—

Machinery and machines, viz.—machinery (electrical, iron working (power), mining and smelting, not including oil well or well boring machines), consisting of articles named below:

Turbines, and parts thereof.

The list of articles includes dredge buckets, cranes, fans, cut and cast gears, lathes, motors, presses, punches, transil oil, water wheels, and water-wheel cases and parts thereof.

Complainants contend that their shipments came within the description "Turbines, and parts thereof." The Standard Dictionary defines a turbine as a "rotary motor consisting of a series of vanes or buckets rotating on a spindle in a casing having suitable openings" for the admission and escape of the motive fluid, which may be water, steam, or gas. There is no such "machinery" as an "electrical * * * turbine," and the term "electrical" in the parenthetical

portion of the tariff item can not be interpreted as an adjective modifying or qualifying the noun "turbines." The tariff term "turbines," being unrestricted as to the motive fluid, must be construed as including water (or hydraulic), steam, and gas turbines. A witness for defendants in No. 11417 stated that if complainants can prove that the articles shipped were in fact turbines, "then it follows any rate on turbines is applicable on them."

The testimony of expert witnesses leaves no doubt that these shipments consisted of steam turbines. They were shipped to the Pacific coast and placed in steamships built for the United States Shipping Board Emergency Fleet Corporation. They contained a "reversing element" and were installed to drive the propeller shafts in connection with a set of gearing. A vessel may have some of the latter with no reversing elements. Steam turbines of the same type are used in vessels to drive electric generators, which, in turn, furnish the propelling power. Some ships employ large steam turbines for propulsion and smaller ones of the same type without reversing elements to drive electric generators for lighting the ship, and for operating iron-working machinery, such as lathes.

There is no essential difference in fundamental principle, type, design, construction, appearance, or transportation qualities between the steam turbines comprised in the shipments here considered and those used to drive electric generators, or those used in connection with mining and smelting machinery, or power iron-working machinery, sawmills, or any other application where a rotary motion is required. An expert testified that the reversing element is not a fundamental or essential part of the steam turbines, that steam turbines for marine propulsion and for electric generators are essentially the same in principle, construction, and appearance; that steam turbines are used in the plant of an electric power company in South Portland which are almost identical in design with the turbines used in a Government vessel named by him and with those here considered. Defendants' witness admits that no distinction can be drawn under the tariff description quoted between turbines with and without reversing elements, or between steam turbines used on land and steam turbines used in ships.

An expert testified that the essential features of a water turbine closely resemble those of a steam turbine, but that steam turbines are essentially different in design, construction, and principle from reciprocating or ordinary steam engines; and that the term "steam engine" may be applied loosely or colloquially, but never technically, to steam turbines.

Defendants' witness admits that there is a decided difference in type and appearance between reciprocating steam engines and steam

turbines, but he contends that the term "turbines" in the tariff item includes only water wheels, or water turbines, and does not include steam or gas turbines; and states that if he were to make a rate on steam turbines he would clarify this item and limit it to apply to "water wheels, including turbine water wheels."

Defendants attempt to prove by the history of the tariff item that it was the intention of the framer to limit "turbines" to "water wheels," or "water turbines." The fact that the same tariff item makes specific provision for "water wheels" and "water-wheel cases and parts thereof" negatives the contention that "turbines" only applied to "water wheels." Furthermore, there is no ambiguity in the word "turbines" itself, and the intention of the framer can not be considered. Even if there were ambiguity in this respect the tariff should be construed against the framer. It can not be seriously questioned that the item "turbines and parts thereof" included water, steam, or gas turbines.

The principal question which gave rise to these proceedings is: What effect upon the special item "turbines and parts thereof" must be given to the parenthetical words "(electrical, iron working (power), mining and smelting, * * *)" in connection with the general heading "machinery and machines, viz." Since there is no such machine as an "electrical turbine," and since there are no special types of turbines which are strictly electrical, iron-working, mining, and smelting machinery the words in parentheses must be construed as merely a general description of the articles in the list following them. Even if they should be construed as limiting the use to which steam turbines are to be put after arrival at destination, such a limitation would be condemned. We have frequently found that it is unlawful to attempt by tariff description to make rates dependent upon the use to which the commodity is put. The same tariff item lists, among the articles, "buckets, dredge." Can it be said that a dredge bucket is a certain kind or part of electrical or iron-working machinery? And would not this rate on dredge buckets apply whether intended for use in an electrical plant, in a sawmill, on a steam shovel, or on a ship? We find that the parenthetical clause does not so limit the item "turbines" as to exclude steam turbines used in steamships for propulsion purposes.

We find that the charges assailed were illegal, and that the combination rates above named were applicable.

Defendants should promptly reframe the tariff item in accordance with our findings, which should not be construed as passing upon the reasonableness of rates or ratings on steam turbines as compared with reciprocating steam engines, or water turbines. The overcharges should be refunded promptly. No order for the future is necessary. The complaints will be dismissed.

No. 12277.

WILLIAM L. CARNEY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted November 17, 1921. Decided March 18, 1922.

Two carloads of anthracite coal shipped from Dunmore, Pa., to Chicago, Ill., found to have been misrouted. Reparation denied for lack of proof.

William L. Carney for complainant, in person.

Royal McKenna for director general.

J. McCollum for Erie Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner.

Complainant is a public traffic manager with an office at Chicago, Ill. By complaint, filed February 7, 1921, he alleges that the rates charged the Grogan Coal Company on two carloads of anthracite coal shipped July 5 and 9, 1918, from Dunmore, Pa., to Chicago, were in violation of section 6 of the interstate commerce act. At the hearing the complaint was amended to include an allegation of misrouting. The prayer is for reparation on behalf of the Grogan Coal Company.

The shipments moved over the Erie to Marion, Ohio, and the Chicago & Erie beyond. Charges were assessed at the applicable joint rate of \$4.50 per gross ton. Contemporaneously a lower combination rate of \$3.90 per gross ton applied in connection with the lines of the Pennsylvania system from Akron, Ohio. The latter rate did not reflect the increases provided by General Order No. 28 of the Director General of Railroads, because the supplement carrying these increases did not cancel or amend the tariff rule which provided that a through rate made on combination would be the combination of rates in effect and on file with us on March 26, 1918, plus 15 cents per gross ton. Defendant is in error in contending

that the combination rate through Akron was \$4.55 per gross ton, since that is the combination of the increased rates of June 25, 1918.

No bills of lading were issued, and the shipments moved on mine manifests. Complainant was unable to give any evidence concerning routing instructions. Defendant's witness testified that the routing inserted in the mine manifest was "Erie," and that this routing was requested by the shipper.

The routing "Erie" did not amount to an instruction to move the shipments over the Erie to Marion and the Chicago & Erie beyond. Defendant asserts that it does, because the latter is controlled by the former and operated as a part of the Erie system. But the Chicago & Erie acts as a corporate entity in filing its own annual reports and tariffs.

The routing instructions given by the shipper were incomplete and it was defendant's duty to move the shipments over the cheapest reasonably available route. This was not done.

We find that the shipments were misrouted. No one having knowledge of the facts as to payment of transportation charges appeared at the hearing. Reparation is accordingly denied and the complaint will be dismissed.

No. 12558.

JACOBSON BROTHERS

v.

NORTHERN PACIFIC RAILWAY COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted December 9, 1921. Decided March 18, 1922.

Charges for the movement beyond Duluth, Minn., of a contractor's outfit, shipped from Alice, Minn., to New Duluth, Minn., during Federal control, found not unreasonable, but shipment found to have been misrouted. Reparation awarded.

T. H. Trelford for complainant.*B. W. Scandrett* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is Jacob Jacobson, a building contractor at Duluth, Minn., under the trade name of Jacobson Brothers.

By complaint filed February 28, 1921, he alleges that the rate of 6.3 cents charged for the movement beyond Duluth, Minn., of a contractor's outfit shipped March 8, 1919, from Alice, Minn., to New Duluth, Minn., was unreasonable to the extent that it exceeded 40 cents per net ton. Reparation is asked. Rates are stated in cents per 100 pounds unless otherwise specified.

The shipment weighed 48,600 pounds and moved over the Great Northern via Superior, Wis., to Duluth, and the Northern Pacific beyond. New Duluth is on the Fond du Lac branch of the Northern Pacific, approximately 11.5 miles from the station at Duluth, but within the corporate limits of that city. Charges were collected at a combination rate of 21.3 cents, made up of the class-A rate of 15 cents to Duluth and the former class-A rate of 6.3 cents beyond. The applicable class-A rate from Duluth to New Duluth was 8 cents. At the hearing defendants admitted that the shipment should have moved over an intrastate route through Cloquet, Minn., at a combination class-A rate of 20.4 cents and was misrouted.

Complainant made no attempt to prove that the charges for the movement from Alice to New Duluth were unreasonable. His con-

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tention that the rate charged for the movement beyond Duluth was unreasonable is based upon a comparison thereof with a rate of 2 cents from Duluth to Superior, East End, approximately 12 miles, and a switching rate of 40 cents per net ton from Duluth to New Duluth.

The movement between Duluth and New Duluth is performed by road crews, and defendants contend that it is in no sense a switching service. Traffic on the Fond du Lac branch is very light. Between Duluth and Superior, East End, service is performed by the Lake Superior Terminal & Transfer Company, which is controlled by four trunk lines, and traffic is heavy. If complainant's shipment had been destined to Superior, East End, it would not have moved through Duluth, but would have been delivered to the terminal company at Superior. The 40-cent rate between Duluth and New Duluth is not applicable in connection with road hauls. Its history is not entirely clear, but apparently it is maintained under a requirement of the State commission and is little used.

We find that the rate assailed was not unreasonable but that the shipment was misrouted. We further find that complainant was damaged thereby and is entitled to reparation in the sum of \$4.38, with interest.

An appropriate order will be entered.

68 I. C. C.

No. 12587.¹
MAGARGEE BROTHERS, INCORPORATED,
v.
DELAWARE & HUDSON COMPANY ET AL.

Submitted December 9, 1921. Decided March 18, 1922.

Rate applicable on newsprint paper, in carloads, from Corinth, Delano Junction, and Fort Edwards, N. Y., to Scranton, Pa., found not unreasonable, unjustly discriminatory, or unduly prejudicial. Refund of overcharges directed and complaints dismissed.

M. J. Martin for complainant.

W. J. Larrabee for director general, as agent, and Delaware, Lackawanna & Western Railroad Company.

Edward T. Noble for Delaware & Hudson Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation engaged in the wholesale paper business at Scranton, Pa. By complaint filed February 28, 1921, it alleges that the rates charged on various carloads of newsprint paper, shipped from Corinth, Delano Junction, and Fort Edwards, N. Y., to Scranton since January 1, 1918, were, and that the present rate is, unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe a reasonable rate for the future and to award reparation. Rates will be stated in cents per 100 pounds.

Corinth, Delano Junction, and Fort Edwards are local stations on the Delaware & Hudson a few miles north of Saratoga Springs, N. Y., a junction point between that line and the Boston & Maine. The shipments on which reparation is sought were made between July 1, 1918, and August 12, 1920, inclusive. They moved, as routed by the shipper, over the Delaware & Hudson to Binghamton, N. Y., and the Delaware, Lackawanna & Western, hereinafter called the

¹ This report also embraces No. 12587 (Sub-No. 1), Same v. Director General, as Agent.
68 I. C. C.

Lackawanna, beyond. Charges were collected at the applicable joint commodity rate of 22.5 cents on most of the shipments, but on some overcharges exist which should be promptly refunded, with interest.

A combination rate of 18 cents was contemporaneously in effect on newsprint paper from the points of origin to complainant's plant at Scranton when routed over the Delaware & Hudson to Scranton. This rate was composed of a commodity rate of 15.5 cents to Scranton and the Lackawanna's switching rate of 2.5 cents. The distance from Corinth and Fort Edwards to Scranton over this route is 219 miles and from Delano Junction 265 miles, or approximately 10 miles less in each instance than over the route of movement. The 22.5-cent rate is compared with rates of from 22 to 25.5 cents contemporaneously in effect on the same commodity from and to other points for distances ranging from 218 to 291 miles. The 22.5-cent rate also applied from various other points in New York to Scranton for two-line hauls, 231 to 302 miles.

No evidence was introduced in support of the allegation of unjust discrimination or undue prejudice. The Delaware & Hudson at one time agreed to publish a rate of 17.5 cents on this traffic for direct movement over its line, but did not establish it. Complainant relied largely upon this promise. The fact that a lower rate was and is contemporaneously applicable over the Delaware & Hudson direct does not of itself prove that a higher rate for a two-line haul is unreasonable.

We find that the applicable rate was not and that the present rate is not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaints will be dismissed.

68 I. C. C.

No. 12601.

RIVERSIDE COAL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, OHIO & KENTUCKY
RAILWAY COMPANY, ET AL.

Submitted January 27, 1922. Decided March 18, 1922.

Rates on bituminous coal, in carloads, from mines on the Ohio & Kentucky Railway near O. & K. Junction, Ky., to Cincinnati, Ohio, and points in central and western territories found unreasonable. Measure of reasonable maximum rates prescribed for the future.

Francis B. James, E. E. Williamson, Ewing H. Scott, and Frederick Schwertner for complainant and interveners.

Nelson W. Proctor for Louisville & Nashville Railroad Company.

G. F. Graham, F. M. Nickell, and Norman & Graham for Ohio & Kentucky Railway Company.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued.

Complainant, a corporation, mines coal on the Ohio & Kentucky Railway, near Three Mile, Ky., 1.5 miles north of O. & K. Junction, Ky. By complaint, filed February 28, 1921, as amended, it alleges that the rates on bituminous coal, in carloads, from its mines to Cincinnati, Ohio, and points beyond in central and western territories are unjust and unreasonable to the extent that they exceed the rates from O. & K. Junction and near-by points on the main and branch lines of the Louisville & Nashville taking the same rates. We are asked to prescribe just and reasonable rates for the future. The Jones Brothers Coal Company and the Emery-Cain Coal Company, operators of mines adjacent to complainant's, intervened in support of the complaint. Rates will be stated in amounts per net ton.

The Ohio & Kentucky, about 40 miles in length, extends from Licking River, Ky., to O. & K. Junction, where it connects with the Eastern Kentucky division of the Louisville & Nashville, its sole

outlet. See map facing page 158 of *Bituminous Coal to C. F. A. Territory*, 46 I. C. C., 66. The road does a general passenger and freight business. Formerly lumber and cannel coal comprised its heaviest tonnage, but in recent years several bituminous coal mines have been opened up along this route, and this character of coal now constitutes its principal traffic. In the year 1920 the total of all freight hauled was 155,488 tons, of which 96,220 tons, or 61.9 per cent, was bituminous coal. Complainant and interveners produce about 80 per cent of this amount, the former's tonnage being 28,000 tons and the latter's about 37,500 tons.

Prior to May 1, 1919, bituminous coal from points on this line to northern markets moved on combination rates, composed of the local rate of the Ohio & Kentucky plus the rates of the Louisville & Nashville from O. & K. Junction. The local rates of the Ohio & Kentucky between November 24, 1917, and May 1, 1919, ranged from 20 to 60 cents. On May 1, 1919, joint rates were established from all points on the Ohio & Kentucky 20 cents per ton higher than the rates from O. & K. Junction. While the joint rates have since been increased, this differential has been preserved in the present adjustment.

Rates from the 13 or more points on the main and branch lines and spur connections of the Louisville & Nashville from O. & K. Junction south to and including Hombre, Ky., 60 miles south of O. & K. Junction, and 43 miles west of McRoberts, Ky., are made on the group basis, traffic to northern and western points taking Group-3 rates, and to Cincinnati, Group-6 rates. Group 3 embraces all points in Group 6, as well as points beyond O. & K. Junction as far north as Beattyville, Ky., 10 miles. The territory which takes Group-6 rates is commonly referred to as the Hazard group or district. As illustrative of the present rate situation, rates from O. & K. Junction to Cincinnati, 167 miles, are \$2; to Dayton, Ohio, 223 miles, \$2.38; to Chicago, 451 miles, \$3.43. Rates from complainant's mines to these destinations are 20 cents higher in each instance.

Complainant's mines are about 1.5 miles distant from O. & K. Junction; those of the interveners, less than a mile. These parties contend that, geographically, their mines are within the Hazard district; that the coal they mine is identical with that produced in the Hazard field; and that they should be accorded the same basis of rates. They state that, in order to compete successfully against neighboring producers, they are required to absorb the difference in rates; that the effect of this deduction from their profits was not materially felt during the past, when the demand for coal was great, but that at present this difference in rates has such an influence that unless it is removed by equalizing the rates with those applying

from the Hazard district they probably will be compelled to discontinue operations.

The service in transporting coal from mines on the Ohio & Kentucky is as follows: Orders for cars are placed by the shipper with the Ohio & Kentucky, which, in turn, makes a corresponding request of the Louisville & Nashville. The latter places the empty cars requested on the interchange track at O. & K. Junction. The engine and crew of the Louisville & Nashville that performs this service is a mine-run crew, which also serves other near-by mines on the rails of the Louisville & Nashville. The Ohio & Kentucky moves the cars from the interchange track to the sidings of complainant and interveners. Except on rare occasions, the Ohio & Kentucky performs no spotting service at the mines, the empty cars being moved by gravity to the tipples as needed. Loaded cars are moved from the mines to the scales of the Ohio & Kentucky, which are about 1,600 feet from O. & K. Junction, where they are weighed, and then moved to the interchange. There they are picked up by the mine-run crew of the Louisville & Nashville, and moved to that carrier's yards at Jackson, Ky., about 1.5 miles south of O. & K. Junction. The cars are later hauled to Ravenna, Ky., a mile east of Irvine, Ky., and there placed in a through train.

The movement from mines on the Ohio & Kentucky and the placement of empties is performed by a local freight engine and crew, as an incident to the daily service between O. & K. Junction and Cannel City, Ky., 26.5 miles. The time consumed in the placement of empties and removal of loads ranges from 30 minutes to an hour for each mine. The total daily wages for the local freight-train crew on the Ohio & Kentucky are \$21.30 for a 10-hour day, or \$2.13 per hour; of the Louisville & Nashville switching crew serving O. & K. Junction, \$29.92 for an 8-hour day, or \$3.73 per hour.

Mines at other points within the Hazard district are served by the Louisville & Nashville in the same way as those in the vicinity of O. & K. Junction. Switch engines and crews operate out of North Hazard, Ky., about 47 miles south of O. & K. Junction, the same as out of Jackson, and cars are collected at different points and either moved to Jackson by switching crews or placed in through trains and handled direct to the assembling yards at Ravenna.

The distance to Jackson from complainant's mines is 3 miles. Typo, Ky., one of the points in the Hazard district taking the group rate, is 40 miles from Jackson, and Hombre about 58 miles. The average distance from all Hazard district mines to Cincinnati is 202 miles. The distance to Cincinnati from O. & K. Junction is 167 miles, and, adding a mile, the average distance of complainant's and interveners' mines therefrom, it appears that the Louisville & Nash-

ville in transporting coal from mines on its own rails performs a 31-mile average haul greater than the combined average haul from complainant's and interveners' mines. The average cost of maintenance per mile of road of the Ohio & Kentucky for the year 1920 was \$799, as compared with an average of \$4,517 spent by the Louisville & Nashville for the same year. It is obvious that the advantage in distance in favor of the complaining mines as contrasted with many mines in the Hazard district, offsets to a great extent any ordinary additional cost incident to a two-line haul.

The operating conditions affecting movement from complainant's and interveners' mines are not difficult. A little more difficulty is encountered at the mine of the Jones Brothers Coal Company than at those of the other two, as the spur leading to that mine describes an 18° curve, and a 2 per cent grade against the load has to be overcome. This is negligible, however, considering that the total length of the spur is 1,600 feet.

The interchange track at O. & K. Junction is of simple construction and represents a very small investment. It has been there for years and has not been enlarged. The surrounding land is of comparatively low value, as O. & K. Junction is not a developed community, it containing no industries, stores, or public buildings and very few dwellings. The terminal expense at this point is slight.

The Louisville & Nashville objects to the establishment of the district rate from complainant's and interveners' mines on the ground that the district rates are at present depressed and lower than maximum reasonable rates; that the engine and train service in hauling coal which originates on the Ohio & Kentucky, from the interchange track at O. & K. Junction, is exactly the same as that required in handling coal from its own main and branch line points in the Hazard district; that the extra engine and crew required in the movement of coal from the Ohio & Kentucky mines necessitate additional time, labor, and expense, justifying higher rates from such mines; and that those now in effect are not unreasonable.

This defendant further urges that its divisions of the present joint rates are less than the local from its junction point with the Ohio & Kentucky, and also not higher than reasonable; and that a reduction of the joint rates will result in its being compelled to perform a service for less than a reasonable charge. As a compromise it offered at the hearing to establish proportional rates from O. & K. Junction to the destination territories under consideration, 15 cents per ton less than the junction-point or district rates, leaving undetermined the balance of the rate to be charged by the Ohio & Kentucky.

The evidence does not sustain the assertion that the present rates of the Louisville & Nashville from the Hazard group, which were substantially increased following *Coal from Kentucky, Tennessee, and Virginia*, 60 I. C. C., 166, 168, in addition to the general increases of 1920, are depressed or lower than maximum reasonable rates. That carrier sought to demonstrate this fact by comparisons of rates from various coal-producing points in the South to both southern and northern destinations. But an examination of its exhibits shows that the rates selected to destinations in central territory are for the most part in line with those from the Hazard district. A further indication that the rates from the Hazard group are not lower than the general level of interstate bituminous coal rates from southern mines to northern cities is the fact, pointed out by complainant, that they are the same to points in Illinois, Indiana, and western territory as from Louisville & Nashville Group 1, or Jellico group, points in southern Kentucky and northern Tennessee, and generally the same to central territory east of the Indiana-Illinois line as from points in Louisville & Nashville Group 4, including McRoberts, although the average distance of the mines taking Group-1 and Group-4 rates to northern markets is greater than the average distance of points in the Hazard district to the same destinations. That carrier also urges that the present rates from O. & K. Junction to particular destinations, such as Toledo, Ohio, 370 miles, \$2.66, and Detroit, Mich., 434 miles, \$2.87, are depressed as compared with rates to other destinations, such as Indianapolis, Ind., 276 miles, \$2.80, and Vincennes, Ind., 354 miles, \$3.43, but the rates from O. & K. Junction, generally speaking, are based on those from the districts comprising the so-called Inner Crescent group shown in blue on the map previously referred to, and the destinations also are grouped. Undoubtedly under this extensive grouping system, which we did not disturb in *Bituminous Coal to C. F. A. Territory, supra*, the Louisville & Nashville receives higher rates to certain destinations, and lower rates to others, than it would under a distance scale. In passing upon the reasonableness of group rates, distances and ton-mile earnings between selected points can not be regarded as controlling. The reasonableness of such rates must be judged by average conditions. The reasonableness of the Louisville & Nashville's present division, or of the proposed proportional rate, need not be dwelt upon in detail, as the issue presented for determination is the reasonableness of the present joint rates from complainant's and interveners' mines and not what each carrier earns therefrom.

The Ohio & Kentucky's opposition to the relief sought is chiefly on the ground that it would suffer a shrinkage in revenue, calling attention to the fact that it has incurred operating deficits for the

past few years. Its annual report for 1919 shows a loss of \$13,782.42, and for 1920, \$7,328.82. It states that the average cost per ton for moving bituminous coal from mines on its line to O. & K. Junction is 50 cents. The evidence submitted to support this figure is not sufficiently detailed and is far from convincing.

Complainant further contends that the facts and circumstances presented in the instant case can not be differentiated from those in numerous cases in which we prescribed the district rate for application from points on independent short lines. *Campbell's Creek Coal Co. v. A. R. R. Co.*, 29 I. C. C., 682; *Stonega Coke & Coal Co. v. L. & N. R. R. Co.*, 39 I. C. C., 523; *Coal from W. Va. Mines*, 59 I. C. C., 486; *Coal from Sewell Valley R. R. Stations*, 58 I. C. C., 261; *Coal from Norton & Northern Ry. Mines*, 58 I. C. C., 739; *Little Fork Coal Co. v. E. K. Ry. Co.*, 59 I. C. C., 693; and *Consolidation Coal Co. v. C. & O. Ry. Co.*, 60 I. C. C., 763. Defendants attempt to differentiate the instant case from those above cited. The determination as to the reasonableness of a rate rests, of course, upon the facts and circumstances present in each case.

We find that the rates on bituminous coal, in carloads, from mines on the Ohio & Kentucky between O. & K. Junction and Three Mile, Ky., to Cincinnati, Ohio, and to other points on defendants' lines in central and western territories are, and for the future will be, unjust and unreasonable to the extent that they exceed or may exceed the rates contemporaneously maintained on the same traffic to the same destinations from O. & K. Junction and points taking the same rates on the main line, and on branch lines or spur connections of the Louisville & Nashville from O. & K. Junction south to and including Hombre, Ky. An order for the future will be entered.

COMMISSIONER POTTER dissents.

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No. 12749.

MURPHY MANUFACTURING COMPANY

v.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted December 20, 1921. Decided March 18, 1922.

Charges on a carload of steel bed parts from Chicago, Ill., to Tacoma, Wash.,
found not unreasonable. Complaint dismissed.

Jay W. McCune for complainant.

Royal McKenna for director general, as agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are F. B. Murphy and Andrew Larson, copartners, manufacturing beds at Tacoma, Wash., under the firm name of Murphy Manufacturing Company.

By complaint filed February 23, 1921, they allege that the rate of \$1.50 per 100 pounds charged on 42,932 pounds of steel bed parts, shipped January 12, 1918, from Chicago, Ill., to Tacoma was unjust and unreasonable to the extent that it exceeded \$1 per 100 pounds. Reparation is asked.

At the time of movement the \$1 rate was in effect from Chicago to Tacoma on—

Tubing (other than coils), round or square, straight or bent, iron or steel, plain or brass covered, and unfinished brass, iron, or steel bed parts, brass parts not to exceed 10 per cent of the total weight of shipment, crated, minimum C. L. weight 40,000 pounds

and was properly assessed on that part of the shipment consisting of three barrels and one keg of steel bed parts weighing 1,372 pounds. Steel bed rails, described as 1.5-inch angle iron in lengths of 6 feet 2 inches, with notched ends, constituted the remainder of the shipment. They weighed 42,932 pounds, and as they were loose a 50 per cent higher rate was properly assessed.

Following *Transcontinental Commodity Rates*, 48 I. C. C., 79, a rate of \$1.15 per 100 pounds was established from Chicago to

Tacoma and Spokane, Wash., effective March 15, 1918, in lieu of the \$1 rate to Tacoma and a rate of \$1.07 to Spokane. On June 25, 1918, the \$1.15 rate was increased to \$1.44, and on July 10, 1919, was made applicable on steel bed rails in bundles.

Complainant proceeded upon the theory that the requirement as to crating or boxing steel bed rails was unreasonable, but offered no evidence that the present requirement of boxing, crating, or bundling is unreasonable.

We find that the charges assailed were not unreasonable. The complaint will be dismissed.

68 I. C. C.

No. 10733.¹

NATIONAL PAVING BRICK MANUFACTURERS ASSOCIATION
ET AL.

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted January 18, 1922. Decided April 4, 1922.

Upon complaint presenting a general attack upon the level and relationship of interstate line-haul rates on brick, hollow building tile, and other clay products, in carloads, throughout the United States except as to territory west of the Rocky Mountains, and also presenting the question of discrimination between the interstate and intrastate rates on this traffic in Illinois and Indiana, *Found:*

1. It is, and will be, unreasonable for defendants to fail to maintain a uniform brick list under which face, fire, and paving brick, hollow building tile, and other specified clay products, not including common brick, shall be accorded equal rates from and to the same points for interstate transportation, in carloads, from and to all points in the United States east of the Rocky Mountains, subject to a carload minimum weight not exceeding 60,000 pounds, marked capacity of car to govern.
2. Other clay products having transportation characteristics similar to those of articles in the uniform brick list not excluded from the list, but flue lining, drain tile, sewer pipe, and articles of similar nature should not be included.
3. For distances not in excess of 150 miles, interstate rates on common brick, as defined in the report, when loaded at random to the marked capacity of the car without protection against chipping or breaking, will be unjust and unreasonable to the extent that they exceed 80 per cent of the contemporaneous rates on articles in the uniform brick list.
4. General level of rates on brick and other clay products not shown to have been higher than the rates on "all freight" prior to *Ex parte* 74 in either of the territories involved.
5. The 1911 group and differential adjustment on brick within central and trunk-line territories, and between points in either territory and points in the other territory, including the adjustment from Indiana-Illinois producing points, should be substantially restored and maintained except to the extent indicated.
6. Failure of defendants to treat the so-called Wabash Valley group, comprising the Danville, Veedersburg, and Terre Haute groups of producing points in Indiana and Illinois, as one group in all directions on long-haul interstate brick traffic is, and will be, unreasonable except that the groupings under the 1911 adjustment should be restored and maintained with respect to traffic to Chicago, Ill., and Milwaukee, Wis., and intermediate territory. On short-haul interstate traffic from points within the Wabash Valley group to Indiana-Illinois points the

¹ This report also embraces Investigation and Suspension Docket No. 1454, Brick from St. Louis and Vandalia, Mo., to Eastern Trunk Line Territory, and Investigation and Suspension Docket No. 1470, Brick and Clay from Kane, Pa., to New York and Philadelphia Group Points.

- central-territory scale prescribed herein should be observed as maximum, subject to the group and differential adjustment to Chicago and related points.
7. Under the general readjustment of rates required, interstate rates on articles in the uniform brick list, in carloads, in central and trunk-line territories, and between Chicago, Ill., and New York, N. Y., will be unreasonable. Maximum reasonable base rates ordered to be established between Chicago and New York, from Danville, Ill., and Attica, Ind., to Chicago, from Canton, Ohio, to Chicago, and from Pittsburgh, Pa., to New York, to be used by the carriers as bases for checking in related rates in accordance with the findings of the report.
 8. Short-haul interstate rates on articles in the uniform brick list, in carloads, within central territory, including all points in Illinois, and within trunk-line territory, will be unreasonable to the extent indicated, the group and differential adjustment to govern where higher rates result from that adjustment.
 9. Intrastate rates on articles in the uniform brick list, in carloads, from Danville to Chicago, to the extent that they are lower than the interstate carload rates contemporaneously maintained on articles in the uniform brick list from Danville and Attica to Chicago are unduly prejudicial to Attica and to shippers of brick and other clay products in interstate commerce from Danville and Attica to Chicago, unduly preferential of shippers of brick and other clay products in intrastate commerce from Danville to Chicago, and unjustly discriminatory against interstate commerce. Undue prejudice and discrimination ordered removed. Cooperation of State authorities, with a view to harmonizing intrastate rates generally within Illinois and Indiana with the interstate rates prescribed herein from Danville and Attica, suggested.
 10. The record affords no basis for making any general changes in the rates and rate structures within New England, southern, western, and southwestern territories, except such changes as may result from the establishment of the uniform brick list.
 11. Brick is essentially traffic which moves at commodity rates, and commodity rates should be established where a movement is indicated.
 12. Suspended schedules in Investigation and Suspension Docket No. 1454 and Investigation and Suspension Docket No. 1470 ordered canceled without prejudice to the right of respondents therein to establish rates in accordance with the conclusions in this report.

Michael F. Gallagher, Francis B. James, Earl B. Wilkinson, Ewing H. Scott, and Gallagher, Kohlsaat & Rinaker for complainants.

R. W. Ropiequet and C. A. Shank for Chicago common brick producers; *Thomas L. Philips, I. W. Preetorius, A. H. Killinger, and L. M. Wallace* for Refractories Traffic Association of St. Louis; *C. R. Hillyer* for Western Brick Company, Danville Brick Company, and Refractories Manufacturers Association; *Ed. P. Byars* for Texas Brick Manufacturers Association, Southwestern Hollow Tile Association, and others; *H. C. McCord* for Oklahoma Clay Products Association; *George N. Brown and Brown & Boyle* for various brick manufacturers in Alabama, Georgia, and Tennessee; and *Wilbur La Roe, jr.*, for Eastern Section, Refractories Manufacturers Association, interveners.

D. P. Connell and James W. Carmalt for carriers in central, trunk-line, and New England territories; *F. E. Webster* for Chicago & Eastern Illinois Railroad Company; *Chas. J. Rixey, jr., H. L.*

Walker, Henry Thurtell, and F. W. Gwathmey for Southern Railway Company, Atlantic Coast Line Railroad Company, and Seaboard Air Line Railway Company; *Edw. D. Mohr* for Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, Louisville, Henderson & St. Louis Railway Company, and Illinois Central Railroad Company; *J. L. Sheppard* for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company; *J. S. Patterson* for Chesapeake & Ohio Railway Company; *M. E. Newell* for Tennessee Central Railroad Company; *A. B. Enoch, J. N. Davis, and H. G. Herbel* for carriers in the western district; *F. K. Crosby* for Chicago, Rock Island & Pacific Railway Company; *B. F. Parsons* for Chicago Great Western Railroad Company; *F. H. Towner, C. W. Galligan, and J. A. Behrle* for Chicago & Alton Railroad Company; and *Thomas R. Farrell* for Wabash Railway Company.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

The complaint in No. 10733 was filed by the National Paving Brick Manufacturers Association, the American Face Brick Association, and the Hollow Building Tile Association on behalf of their respective members. The members of these three associations operate plants in central, trunk-line, New England, southern, western trunk-line, and southwestern territories. The National Paving Brick Manufacturers Association represents substantially all the production of paving brick in the country. The members of the two other associations produce approximately 75 per cent of the total output of face brick and standard clay hollow building tile in the country. Complainants also produce the other articles named in the margin, including a substantial amount of brick sold as common brick, although not representing the common-brick manufacturers nationally. The approximate investment of complainants in paving-brick plants is \$21,000,000; in face-brick plants, \$40,000,000; and in clay building-tile plants, \$32,000,000.

The complaint as amended presents a general attack on the level and relationship of interstate line-haul rates on brick and clay hollow building tile¹ in carloads throughout the United States except as to territory west of the Rocky Mountains. The question of discrimination between interstate rates and the intrastate rates in Illinois and Indiana is also presented. The authorities of those States were

¹ The articles produced and shipped by complainants and which are directly involved in this proceeding are: Paving brick, face brick, common brick, clay hollow building tile, fire brick, silo block, radial-chimney block, segment block, condensing block, conduit (not lined), and clay and shale slabs. Silo, radial chimney segment, and condensing blocks and conduit not lined are said to be trade names for certain forms of hollow building tile and to fall within the general description of building tile. Face brick is sometimes called pressed or front brick.

duly notified of the hearing. Switching charges and rates from points just outside the established switching districts of large cities, which are made with relation to the switching charges in those districts, are not involved. The two main purposes of the complaint as set forth by complainants are to secure a readjustment of the rates on brick and clay hollow building tile to a lower, more reasonable, and relatively fairer basis; and to secure the establishment of fair competitive relations in the rates as between shippers where the proper relations have been disturbed or where the rates are not now fairly and justly related. Complainants also seek the establishment, for rate-making purposes, of a proper and uniform classification or list of brick and clay hollow building tile and similar articles, and a proper and uniform rule for minimum car loading for these commodities determined in relation to the general level or measure of rates. Complainants assert that they are not asking for a rate check by this commission, but that they are asking that specific findings and conclusions be made and rules, principles, and standards announced, in accordance with which just and reasonable rates, properly related, and under uniform commodity description, can be established.

Intervening petitions were filed on behalf of various brick manufacturers of Illinois, Oklahoma, Texas, Alabama, Georgia, and Tennessee, and by the Refractories Manufacturers Association of America, primarily with a view to bringing to our attention their own peculiar situations. Generally speaking, they are not opposed to the purposes of the complaint, although some of the interveners differ in important respects from complainants on certain of the issues involved.

Exceptions were filed to the report proposed by the examiner and the case was submitted upon oral argument had November 10 and 12, 1921.

PRODUCTION AND DISTRIBUTION.

The production of brick and tile in 1916, estimated from the values of clay products as shown in a Government publication of record, was as follows:

	Tons.	Per cent of total.
Common brick.....	18,485,000	57
Paving brick.....	3,700,000	12
Face brick.....	2,500,000	8
Tile.....	3,000,000	9
Fire brick.....	4,500,000	14
Total.....	32,185,000	100

The percentages, in thousands, of common, paving, and face brick produced during that year were: Common brick, 79.2 per cent; paving brick, 10.1 per cent; and face brick, 10.7 per cent.

Brick and tile plants are usually located at or near a deposit of clay or shale suitable for the manufactured product. Certain chemical qualities frequently determine the product that can be made to the best commercial advantage. Building tile is made from shale or clay, and brick and tile are sometimes made in the same plants of the same raw materials, a shift from brick to tile involving merely a change of the dies and cutting machines. Face brick is frequently made from the same kind of clay or shale as other brick, although certain types are made from a better grade of clay, and more care is exercised in the manufacture and handling of face brick than in the case of common brick. The culls or seconds of paving, face, and fire brick, which are not in excess of 20 per cent of the product of the kiln, are sold in competition with common brick; and paving brick which can not stand the paving-brick tests are often used as face brick in the construction of large buildings.

What is strictly known as common brick is a nonvitrified brick produced from local or low-grade surface clay found practically everywhere. It is the cheapest brick in any locality and, unlike other brick and tile, usually moves for short distances only. The large producing districts for paving brick are the Ohio-Pennsylvania, Illinois-Indiana, and Oklahoma-Kansas districts. The production of paving brick in the South is largely in Alabama, with some in Tennessee and Georgia. Of the total face-brick output of the country, about 73 per cent is produced in central and trunk-line territories, 5 per cent in the South, and the remainder west of the Mississippi River. Fire brick is produced at various localities where fire clay is available. It is made in three grades, high, intermediate, and low, the grade or heat-resisting quality depending on the quality of the fire clay used. About 73 per cent of the building tile is produced in central and trunk-line territories, 25 per cent in the West, and 2 per cent in the South. Paving, face, and fire brick have a wide distribution, and move long distances except where the movement is restricted by competition. Building tile is both short-haul and long-haul traffic.

TRANSPORTATION CHARACTERISTICS.

The standard paving brick is $2\frac{1}{4}$ by 4 by 8 inches. Paving brick is also made in two larger common sizes, $3\frac{1}{2}$ by 4 by $8\frac{1}{2}$ inches, and 3 by 4 by $8\frac{1}{2}$ inches. The general size of face and common brick is 8 by $2\frac{1}{4}$ by $3\frac{1}{2}$ inches. The average weights per 1,000 bricks are: Paving, 3.5 to 5 tons; common, 2 to 2.5 tons; face, 2.75 tons; and fire, 3.5 tons. An 8 by 12 by 12 hollow building tile weighs from 30 to 36 pounds, and displaces 14 bricks of standard size.

The range of values of the various kinds of brick and hollow building tile f. o. b. plant was, at the time of the hearing, as follows:

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Common brick, \$6.50 to \$10 per ton, or \$14 to \$24 per 1,000, depending largely on the locality in which produced; No. 1 paving brick, \$7 to \$7.50 per ton, or about \$35 per 1,000; face brick, from \$8 to \$13 per ton, or from \$20 to \$40 per 1,000, with a small proportion of higher value, the difference in value depending largely on the shade and texture; fire brick, \$11.40 to \$14.30 per ton, or \$40 to \$50 per 1,000; and hollow building tile, including segment block, silo block, and condensing rings, approximately \$10 per ton on the average. The value of conduits is \$17 per ton. The value of radial-chimney block is not shown, although apparently it falls within the range of values on other hollow building tile. Perhaps the lowest grade common brick is what is known as the Chicago common brick, produced at Chicago, Ill., and vicinity. This brick weighs about 4 pounds each and, as stated, sells for \$14 per 1,000 while face brick ranges in value from \$20 to \$40 and higher per 1,000. According to the Government publication above referred to, the average value per 1,000 of the common brick produced in the United States in 1916 was \$6.08; paving brick, \$13; and face brick, \$11.43. The average value of hollow building tile in 1917 was \$5.12 per ton.

The brick and tile traffic moves in a wide range of equipment, frequently in cars which would not be suitable for most commodities, and in cars, particularly stock cars, which would otherwise move empty for loading. No expedited service is required on this traffic, and with the exception of fire brick, it moves generally in the summer months when operating conditions are favorable. It is ordinarily shipped under weight agreements, thus eliminating the expense of weighing. From large producing points to common junctions it moves in train lots. Deliveries are ordinarily made on team tracks. Loss and damage claims on brick and hollow building tile are negligible.

Brick and hollow building tile load heavily and constitute perhaps the heaviest loading commodities shipped in as wide a range of equipment. In recent years the average loading per car of these commodities except silo block has exceeded 60,000 pounds. The general practice of the face-brick industry is to load 110 per cent of the marked capacity of the car. About 22 tons of silo block are used in the construction of a silo, and the actual loading of that commodity is affected more or less by the commercial limitation, although it can readily be loaded in excess of 60,000 pounds. Face brick and certain so-called common brick sold for facing purposes are loaded with straw between each course. Common brick are thrown into the car or loaded without any protection against chipping or breaking. Straw is not ordinarily used in loading hollow building tile. The tile is loaded in tiers and wedged in tightly with broken pieces of tile.

The present minimum on brick and hollow building tile is generally 50,000 pounds except in southern territory where the minimum varies from 24,000 to 40,000 pounds and is usually 40,000 pounds where commodity rates apply. Complainants offer to accept a minimum of 60,000 pounds, marked capacity of car to govern if less, if the increased minimum is recognized in fixing the level of the rates. Most of the interveners are also agreeable to a 60,000-pound minimum if hollow building tile is permitted to move under the brick classification in mixed carloads with brick. The Alabama interveners, upon brief and argument, oppose any increased minimum in excess of 50,000 pounds in southern territory.

UNIFORM BRICK LIST.

Complainants propose the following list of clay products for universal application in all territories:

- Brick or block: building or facing except enameled;
- Brick, fire;
- Brick or block: common, solid, hollow or perforated;
- Brick or block: paving, shale or fire clay;
- Brick: salt glazed when shipped in same manner as building or facing brick;
- Ground clay, ground shale or ground fire clay;
- Blocks or tile: hollow building or condensing;
- Blocks: silo, radial chimney and segment;
- Conduits: clay or shale, not lined;
- Slabs: clay or shale, not enameled, not roofing or ornamental, loaded loose in cars, when shipped in the same manner as building or facing brick;
- Tile: hollow building or fireproofing.

Complainants state that the purpose of this list is to include all clay products of substantially the same transportation characteristics, similar car loadings, risk, value, common raw materials, and equipment used, but that they do not seek to exclude any commodity which is fairly entitled to be in such list.

In *Stowe-Fuller Company v. Pennsylvania Co.*, 12 I. C. C., 215, we found that the same rates should apply on fire, building or face, and paving brick from certain producing points in Ohio to New York, N. Y., and other eastern destinations. In *Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co.*, 17 I. C. C., 197, with which was consolidated a rehearing of the *Stowe-Fuller case*, *supra*, this question was again considered on a very complete record and the same conclusion reached. The record in this proceeding emphasizes the correctness of that conclusion. Following those decisions, the carriers in the eastern district have generally applied the same rates on a long list of other clay products, including hollow building tile and the other articles named in complainants' proposed classification. This list has been modified from time to time to meet the demands of various

shippers for the inclusion of their products, and embraces flue lining and other articles which are more fragile and do not load as heavily as brick and hollow building tile, but which complainants do not ask to have included in a uniform list.

Silo, radial-chimney, and segment block, conduit, and condensing rings or block, are forms of hollow building tile designed for particular purposes and should take the same rate as hollow building tile. Silo block, segment block, and radial-chimney block are slightly curved so as to form a complete circle when laid. Silo block has numerous apertures and a groove in the top to hold a reinforcing iron. Segment block is similar to silo block and is used in the construction of sewers over 36 inches in diameter. Radial-chimney block is used in the construction of chimneys and stacks. Condensing blocks usually weigh from 6 to 7 pounds each and are made in square or cylindrical form, reinforced with partitions or spirals. They are used in the oil and acid business for purifying purposes and were produced and shipped in large quantities during the World War. The cylindrical shape does not prevent loading to the capacity of the car. Conduits are used by telephone companies to protect their underground wires. Imperfect conduits are used as hollow building tile for foundations. The conduits are usually made of fire clay and are vitrified to render them impervious to moisture. They constitute only a small percentage of the hollow-tile production, and are made in various shapes and sizes, ranging from a single-duct conduit of octagonal shape, 18 inches long and with a circular opening of about $3\frac{1}{2}$ inches in diameter, to nine-duct rectangular conduits 12 by 12 by 36 inches.

While the record indicates that some forms of hollow building tile are more susceptible to damage than is brick, the additional risk does not appear to be sufficient to warrant a difference in rates, particularly when it is considered that the average value of hollow building tile falls well within the range of values of brick. In the case of standard hollow building tile the chipping or even the breakage of a section does not ordinarily prevent its use in walls. Samples exhibited at the hearing demonstrate that no clear line of demarcation can be drawn between brick with varying percentages of solidity and hollow building tile, and that it is difficult to say where brick ends and where tile begins. Hollow building tile is made from the same raw materials as brick, frequently at the same plant. It is used largely for the same purposes, and the various transportation elements are substantially the same.

In the *Metropolitan Brick Company case, supra*, we found that common building brick, namely, that produced from ordinary clay at kilns in practically every community, should be distinguished from the higher grades of brick and that it had no place in the

classification with such higher grade brick. The Chicago common-brick producers, interveners, earnestly insist that that doctrine should be adhered to. Apparently defendants are not opposed to applying a relatively lower basis of rates on common brick than on other brick if the common brick can be differentiated so as to be effectively policed. The seconds and culls of the higher grade brick are frequently sold in competition with common brick and the apprehended difficulty in policing rests largely on the assumption that such brick should take the same rates as common brick. If common brick is accorded a lower basis of rates and these seconds and culls of the higher grade brick are given the same rates as common brick, the practical impossibility of distinguishing the seconds or culls from the first-grade brick, so as to insure that the latter will not be included, is apparent and is generally recognized both by complainants and the carriers. However, if the lower basis of rates is confined to what is more strictly termed common brick, namely, brick not vitrified, made from low-grade surface clay, loaded loose in the cars without straw or other protection against breakage, and shipped for distances not in excess of 150 miles, the carriers should experience no great difficulty in policing the movement. The characteristics of such common brick are usually well known in the territory in which they are produced and this is particularly true of the Chicago common brick. While it is true that the seconds and culls of the higher-grade brick compete with common brick, they are not necessarily to be regarded as such strictly competitive articles of the same class as to entitle them to the same rate. The ordinary common brick is the finished product of the kiln, while the seconds and culls which are sold in competition with the common brick are the waste or by-products which are produced as an incident to the manufacture of the higher grade brick and must be disposed of. They can and should bear a greater share of the transportation burden than does ordinary common brick. Furthermore, there is a large and growing use of the seconds of paving brick in competition with face brick and the seconds or culls of paving brick are also used to a considerable extent for private paving purposes.

While for obvious reasons we have repeatedly refused to sanction different rates on the same commodity based upon the use to which the article is put, it may be observed that the widespread use of a certain kind of brick for a given purpose is a circumstance of evidentiary value to be considered along with other facts in determining the proper description to be applied. What is known as Harvard brick, for example, manufactured in New England, while referred to by complainants as a common brick, is used exclusively for facing purposes. It is worth \$45 per 1,000 and is properly classified as face

brick. In a proceeding of this general character it is impossible to determine specifically the proper description to be applied to the various individual makes of brick. If the shippers and carriers, following the general principles laid down herein, are unable to agree as to the proper description of any particular type of brick, that matter may be made the subject of a separate complaint. As stated, common brick is ordinarily short-haul traffic and for abnormal movements, or those in excess of 150 miles, we are of opinion that the carriers may reasonably charge the same rates as on face brick.

Hollow building tile is, and for many years has been, carried on the brick basis in New England, trunk-line, central, and western trunk-line territories, as well as from central and trunk-line territories to the Southwest. In the South, where there is a comparatively small production of hollow building tile, there is no fixed relationship between the rates on hollow building tile and brick, and there are but few commodity rates on hollow building tile. In some instances the rates are the same, in others higher, and in others lower than on brick. Paving brick sometimes takes lower rates than common brick. In the Southwest there is one basis of rates on common, face, and paving brick, and a higher basis of rates on fire brick and hollow building tile, which latter basis of rates also applies on flue lining and drain tile. From the Kansas gas belt the rates on brick and tile to Texas points are the same. From St. Louis, Mo., to Texas common points the rate on common brick is lower than on face and paving brick and hollow building tile.

If face, fire, and paving brick and hollow building tile should, from a classification standpoint, take the same rates in one territory, there is obviously no good reason and none has been suggested why they should not also take the same rates in other territories. We are of opinion and find that it is, and for the future will be, unreasonable for defendants to fail to maintain a uniform brick list under which all of the articles named in complainants' proposal, except common brick, shall be accorded equal rates from and to the same points for interstate transportation, in carloads, within and between the territories involved in this proceeding, including the South and Southwest, said uniform brick list to be subject to a carload minimum weight not exceeding 60,000 pounds, marked capacity of car to govern if less than the minimum.

MEASURE OF THE RATES.

Emphasizing the favorable transportation characteristics of the brick and tile traffic, complainants, in support of their contention that the general level of brick and tile rates is unreasonably high, base their case largely upon the theory that this traffic should yield

no greater revenue than the average revenue obtained from all freight traffic, and that in fact it should yield less. They introduced as an exhibit an elaborate and detailed statistical study which purports to show that in the eastern and western districts this traffic, which for the purposes of this discussion may be referred to as brick, is paying a greater proportion of the freight revenues of the carriers, service considered, than the general average of freight transported, while the exhibit indicates that in the southern district brick is paying less than the average of all freight. The general plan followed was to determine from the returns on questionnaires sent out to the various member companies the level of brick rates in 1916 and 1919 when aligned to a uniform scale, and then to compare the rates under that scale with the average on all freight as computed from our statistical reports and the reports of the United States Railroad Administration, after making allowance for the differences in loading, length of haul, percentage of empty movement, and certain other items. From this comparison, and taking into consideration also the transportation characteristics of brick, complainants reach the conclusion that brick rates are 25 per cent too high in central and trunk-line territories and 10 per cent too high in western territory. The total tonnage reported in the returned questionnaires and used in making the statistical study, was approximately 4,000,000 tons, of which over 3,000,000 tons were reported by plants in central and trunk-line territories. These figures do not include any fire-brick or any substantial portion of common-brick shipments.

The carriers for the eastern district offer the following criticisms of the basic figures shown by the returned questionnaires:

(1) The mileages of the shipments used were in each case stated by the shipper and were not checked.

(2) The mileages are in some instances stated to be short-line mileage and in other instances actual mileage.

(3) The tonnages are arrived at in some instances by an estimate based on the number of bricks shipped.

(4) The shipments from plants located in Illinois, Indiana, and Ohio are all included in central territory regardless of the fact that a large number of the plants in Illinois are located wholly in western trunk-line territory and the movement is wholly within that territory. Mileages and rates from plants in these states are all included in the central territory regardless of whether the movement from the plants was within that territory or moved into other territories. The plants located in Pennsylvania and New York in central territory were included in trunk-line territory.

(5) The statistics for trunk-line territory are compiled wholly from the figures submitted by plants located in New Jersey, New York, and Pennsylvania regardless of the fact that many of such plants in western New York and Pennsylvania are in central territory; that no tonnage whatever was included for New England, and that many of the movements from the plants in the states noted went to territory other than the eastern district.

(6) No tonnage of fire brick is included in the statistics. Practically the only tonnage of common brick included represents the culls of the complainants' plants which are sold in competition with the ordinary local common brick.

They also question the accuracy of the conclusions which complainants attempt to draw from our statistical reports and urge that the general theory on which the exhibit proceeds is fundamentally unsound and that the data as to all freight can not properly be applied to brick alone.

Based on the information obtained from the returned questionnaires, complainants arrive at so-called distance scales in form which, it is stated, reflect the present * brick-rate structures and will produce practically the same revenue the carriers are now receiving in the territories covered. Without passing upon the various criticisms made by defendants, it will be assumed for the purposes of this report that the scales thus arrived at are fairly representative of the present level of rates in central and trunk-line territories. The following table shows the separate scales for central and trunk-line territories, together with a composite scale for both territories, the terminal factors used in these scales being 80, 90, and 81 cents per net ton, respectively:

	Rate.		Rate.
	Cents.	Trunk line territory scale—Continued.	Cents.
.....	80	26 miles and not over 26.....	120
er 84.....	100	27 miles and not over 27.....	120
er 45.....	110	28 miles and not over 28.....	120
er 65.....	120	29 miles and not over 29.....	120
er 83.....	130	30 miles and not over 30.....	120
er 102.....	140	31 miles and not over 31.....	120
er 124.....	150	32 miles and not over 32.....	120
er 147.....	160	33 miles and not over 33.....	120
er 174.....	170	34 miles and not over 34.....	120
er 202.....	180	35 miles and not over 35.....	120
er 230.....	190	36 miles and not over 36.....	120
er 259.....	200	37 miles and not over 37.....	120
er 283.....	210	38 miles and not over 38.....	120
er 320.....	220	39 miles and not over 39.....	120
er 366.....	230	40 miles and not over 40.....	120
er 403.....	240	41 miles and not over 41.....	120
er 440.....	250	42 miles and not over 42.....	120
er 477.....	260	43 miles and not over 43.....	120
er 514.....	270	44 miles and not over 44.....	120
er 551.....	280	45 miles and not over 45.....	120
er 588.....	290	46 miles and not over 46.....	120
er 625.....	300	47 miles and not over 47.....	120
er 662.....	310	48 miles and not over 48.....	120
er 700.....	320	49 miles and not over 49.....	120
er 737.....	330	50 miles and not over 50.....	120
er 774.....	340	51 miles and not over 51.....	120
er 811.....	350	52 miles and not over 52.....	120
er 848.....	360	53 miles and not over 53.....	120
er 885.....	370	54 miles and not over 54.....	120
er 922.....	380	55 miles and not over 55.....	120
er 959.....	390	56 miles and not over 56.....	120
er 996.....	400	57 miles and not over 57.....	120
er 1,033.....	410	58 miles and not over 58.....	120
er.....	100	59 miles and not over 59.....	120
er 25.....	110	60 miles and not over 60.....	120

*In the discussion of this exhibit and throughout the report, unless otherwise indicated, the 1919 rates will be referred to as present rates.

	Rate.		Rate.
Trunk line territory scale—Continued:	Cents.	Composite scale—Continued:	Cents.
922 miles and not over 952.....	490	343 miles and not over 377.....	250
953 miles and not over 983.....	490	378 miles and not over 413.....	260
984 miles and not over 1,014.....	500	414 miles and not over 449.....	270
Composite scale:		449 miles and not over 483.....	280
18 miles and under.....	90	444 miles and not over 519.....	290
19 miles and not over 30.....	100	520 miles and not over 554.....	300
31 miles and not over 42.....	110	555 miles and not over 549.....	310
43 miles and not over 56.....	120	590 miles and not over 624.....	320
57 miles and not over 72.....	130	625 miles and not over 660.....	330
73 miles and not over 88.....	140	661 miles and not over 696.....	340
89 miles and not over 107.....	150	696 miles and not over 730.....	350
108 miles and not over 127.....	160	731 miles and not over 766.....	360
128 miles and not over 147.....	170	767 miles and not over 801.....	370
148 miles and not over 171.....	180	802 miles and not over 836.....	380
172 miles and not over 195.....	190	837 miles and not over 872.....	390
196 miles and not over 221.....	200	873 miles and not over 907.....	400
222 miles and not over 248.....	210	908 miles and not over 942.....	410
249 miles and not over 276.....	220	943 miles and not over 977.....	420
277 miles and not over 307.....	230	978 miles and not over 1,013.....	430
308 miles and not over 342.....	240		

Based on the tonnage reported for 1916 for central and trunk-line territories the principal items derived are, for brick, as follows:

1. Tons carried.....	2, 450, 167
2. Total cars, loaded.....	70, 648
3. Load per car.....tons..	34. 7
4. Car-miles.....	11, 760, 721
5. Average haul per car.....miles..	166. 5
6. Ton-miles net.....	400, 781, 804
7. Average haul per ton.....miles..	163. 6
8. Total revenue.....	\$2, 732, 200
9. Revenue per ton.....	\$1. 12
10. Revenue per car.....	\$38. 68
11. Revenue per car-mile.....cents..	23. 23
12. Revenue per net ton-mile.....mills..	6. 82
13. Average tare weight of cars.....tons..	18. 77
14. Ton-miles tare-weight cars.....	220, 748, 733
15. Ratio empty to loaded miles.....per cent..	25. 2
16. Ton-miles, due to empties.....	55, 628, 681
17. Gross ton-miles, with empties.....	677, 159, 218
18. Gross ton-miles per car.....	9, 585
19. Revenue per gross ton-mile.....mills..	4. 04
20. Average lines per car.....	1. 53

The results of a 10-day loading test made in February and March, 1920, in order to determine the kind of cars used in loading brick, the tare weight of the cars, and the load per car, were for central and trunk-line territories as follows:

Kind of car.	Cars, shipped.	Tare weight per car.	Load per car.
		Tons.	Tons.
Box cars.....	1, 054	18. 81	37. 21
Stock cars.....	458	17. 40	35. 02
Coal and gondola cars.....	409	20. 19	44. 45
Totals and averages.....	1, 921	18. 77	37. 97

In connection with this test the "marked capacity" of the cars was noted, and it was found that the cars were loaded on the average to 100.23 per cent of marked capacity.

Page 42 of the statistical exhibit shows the freight-traffic statistics for all freight of Class-I carriers in the eastern, southern, and western districts for the years 1916 and 1919, together with various compilations based on those statistics. This page of the exhibit, in so far as it relates to the eastern district for the year ended December 31, 1916, is reproduced below:

1. Car-miles, loaded.....	7, 074, 677, 612
2. Car-miles, revenue, loaded.....	6, 820, 066, 290
3. Car-miles, empty.....	3, 231, 561, 490
4. Ton-miles, revenue.....	177, 487, 340, 950
5. Ton-miles, nonrevenue.....	10, 184, 452, 861
6. Ton-miles, net (total).....	187, 671, 793, 811
7. Tons carried, revenue freight, carload.....	1, 227, 440, 407
8. Tons carried, revenue freight, less than carload.....	56, 270, 281
9. Tons carried, revenue freight, total.....	1, 283, 710, 688
10. Total car-miles in freight trains.....	(¹)
11. Gross ton-miles in freight trains.....	(¹)
12. Net ton-miles in freight trains.....	(¹)
13. Tare ton-miles in freight trains.....	(¹)
14. Cars carried, revenue freight, total.....	49, 335, 538
15. Cars carried, revenue freight, less than carload.....	9, 378, 380
16. Cars carried, revenue freight, carload.....	39, 957, 158
17. Freight revenue (Class I).....	\$1, 146, 977, 398
18. Average haul, in miles.....	138. 26
19. Average tare weight per car (tons).....	(¹)
20. Average load per car (ton-miles per car-mile), tons.....	26. 02
21. Average revenue per ton.....	\$0. 89
22. Average revenue per ton-mile (mills).....	6. 46
23. Average revenue per car.....	\$23. 16
24. Average revenue per car-mile (cents).....	16. 82
25. Ratio empty to loaded car-miles.....	45. 68
26. Gross ton-miles per car, including proportion of empty haul....	7, 626
27. Revenue per gross ton-mile (mills).....	3. 04

Among the more vital criticisms which may be made of this page of the exhibit are those which relate to the items showing tons of revenue freight carried, carload and less than carload, the average haul per ton, and the revenue per ton. Item 14, which purports to show the number of cars carried of revenue freight, is arrived at by dividing

¹ Items 10 to 13, and also 19, have no figures entered for 1916; for item 19, tare weight per car, the amount shown for 1919, is 20 tons.

the number of tons carried, item 9, by the load per car, item 20, with the following results:

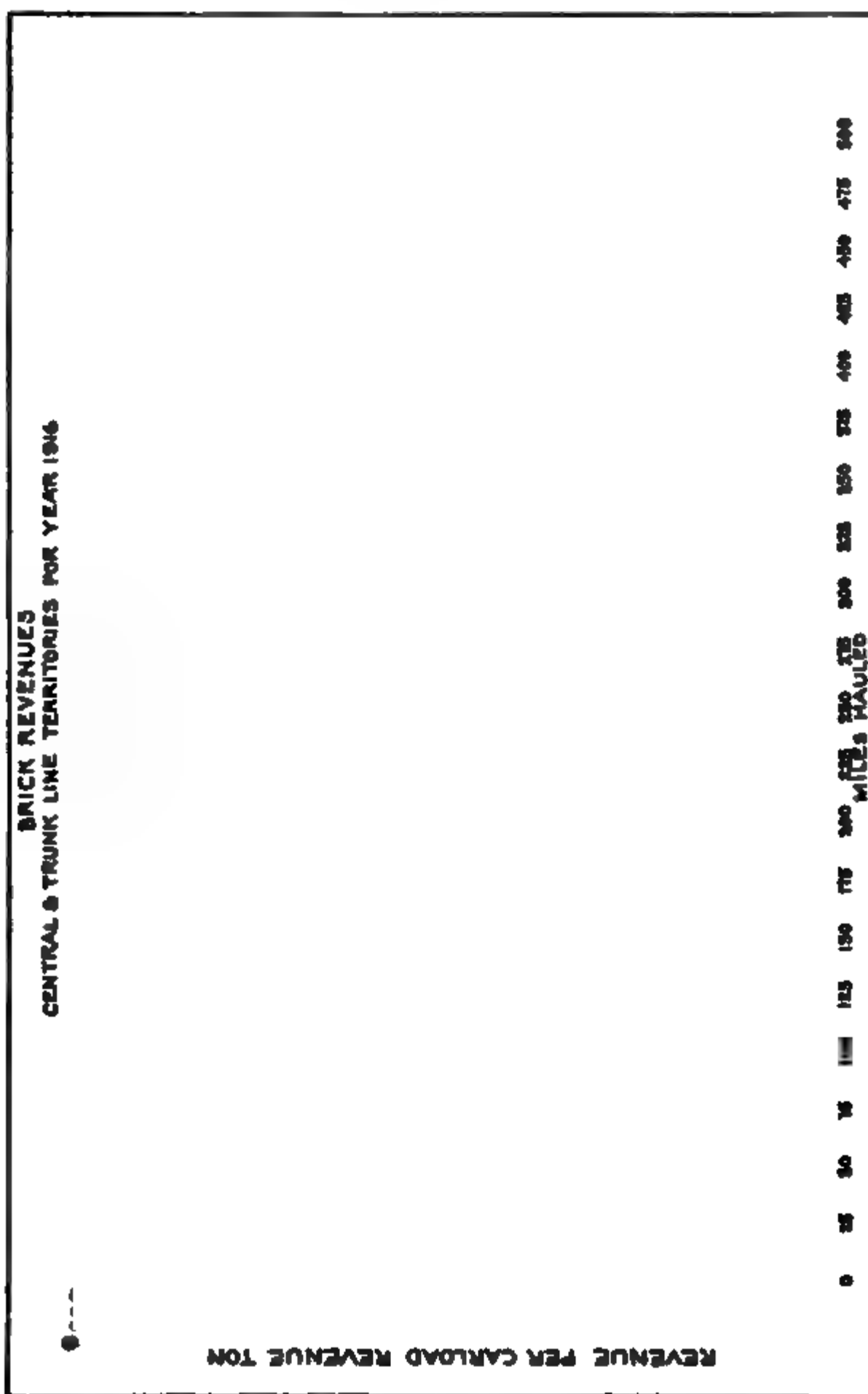
Eastern district.....	49,335,528
Southern district.....	11,936,829
Western district.....	27,849,219
Total.....	89,121,586

The total cars carried are then subdivided into carload and less-than-carload traffic, by dividing the less-than-carload tonnage, as shown in item 8, by an estimated average load for the eastern district, for example, of 6 tons, and the number of carload cars represents the difference between the total cars carried and the less-than-carload cars carried as thus computed. However, the total tons carried, as shown in our statistical report, include numerous duplications, as when an individual shipment moves over the lines of two or more carriers the tonnage is necessarily included in the number of tons reported by each carrier over whose line it moves, and to obtain the number of actual tons moved it is necessary to exclude from the aggregate figures reported the tonnage reported as received from connecting carriers. Thus, as above shown, complainants arrive at a total number of cars carried in the three districts of 89,121,586, while if the entire tonnage of originated freight of the country of Class-I carriers for the year 1916, 1,203,367,190, is divided by the average revenue load per car, or 24.3 tons, the resulting quotient is only 49,521,283, or about 55 per cent of the number used by complainants. Using the corresponding figures for the eastern district, 590,301,231 tons originated freight and 26 tons, the average revenue load per car, the cars carried would number only 22,703,894 instead of 49,335,538 as shown by complainants. While the result thus arrived at, 49,521,283 cars, is correct for the traffic of the Class-I roads of the country as a whole, the result produced for the eastern district is inaccurate for the reason that it does not take into consideration traffic originating in other territories. The average haul shown for the eastern district of 138.26 miles, item 18, is also computed on the basis of the duplicated tonnage, whereas, based on originated tonnage, the typical haul of all the Class-I railways in the eastern district regarded as a system was, for the year 1916, 300.6 miles and for the country as a whole 301.2 miles. The average haul for brick in 1916 in all territories as shown by complainants was 284 miles. The figure 300.6 accurately reflects the completed average haul for the eastern district only to the extent that the movement of the tonnage into and out of the eastern district is a balanced one, but the completed average haul on all freight for 1916 for the eastern district with which the completed average haul on brick,

which complainants find to be 164 miles for central and trunk-line territories, should be compared, is undoubtedly at least 250 miles. The latter figure is that derived by applying the same ratio, average haul of average railway to average haul of all railways regarded as a system, in the eastern district as applies for Class-I carriers in all districts. On basis of 250 miles the cars carried for the eastern district in 1916 numbered only 27,305,745.

Complainants, on the basis of certain cost studies made by the carriers in 1916, arrive at a terminal allowance for less-than-carload freight in 1916 of \$18.54 per car, using an estimated load of 6 tons. After allocating 30 per cent of the freight revenue to terminal service, the terminal-revenue allowance per car is computed at \$6.97 for all freight and \$4.26 for carload freight. Similar computations are made based on an allocation of 50 per cent of the freight revenue to terminal service. The number of carload and less-than-carload cars as computed on page 42 of the exhibit, and which, as above shown, is exaggerated, enters into each of these computations and materially affects the results. As defendants observe, if the less-than-carload terminal revenue allowance were estimated to be 30 per cent of the less-than-carload revenue, it would indicate a total less-than-carload revenue of over 50 per cent of the total freight revenue for the eastern district. The conclusions reached as to the carload terminal-revenue allowance are also subject to the criticism that they involve the assumption that to subtract from the total estimated charges for terminal service the amount that less-than-carload freight *ought* to pay gives what all carload freight *does* pay for terminal service. In complainants' statistical study various assumptions and estimates are used and in some instances these estimates have a very important bearing on the result. Such a study therefore, necessarily becomes very complicated and involved and the final conclusion must necessarily depend to a large extent upon the estimates used, which resolves itself into a matter of judgment.

Shown on page 229 is a graphical presentation of data as to brick rates, taken from complainants' statistical exhibit. In this graph the average haul in miles is used for the horizontal scale and the average revenue per ton for the vertical scale. A curve run through the plotted points cuts the zero mile at about 40 cents, showing that the terminal allowance is about that figure. The freight revenue per revenue-load ton, estimated from the all-freight statistics as \$1.62 for the eastern district, when plotted at 250 miles on the scale, almost coincides with the curve, and based on such a comparison, it would appear that for freight revenue per revenue-load ton the "all-freight" ratio is substantially on a level with the brick figures.



By other methods of computation and by the use of estimates and assumptions at least equally as defensible as those employed by complainants an entirely different result from that shown by complainants may be obtained.

The statistical studies presented by complainants for the western district are subject to similar criticisms. It should also be observed that the scales proposed for the entire western district are based upon questionnaire returns received from but 16 plants in the States of Missouri, Kansas, Oklahoma, and Texas only, and representing a comparatively small amount of tonnage. As stated, the figures submitted for the southern district do not purport to show that the level of the brick rates is higher than on all freight but, on the contrary, that it is lower.

With the many assumptions involved, the impossibility of determining the exact relationship which the rates on brick or on any other commodity bear to all freight is obvious, and the evidence submitted falls short of establishing with any degree of certainty that the general level of the rates on brick prior to *Increased Rates, 1920*, 58 I. C. C., 220, hereinafter referred to as *Ex parte 74*, was in fact higher than the rates on all freight in either of the territories involved. Even if exact statistics were available, so that the relationship of "all freight" and brick could be definitely determined it would be necessary to take into consideration the fact that all freight is a grand mixture of commodities, including products of agriculture, products of animals, products of mines, products of forests, manufactures, and miscellaneous commodities. For the year 1916, coal, stone, and sand constituted over 54 per cent, and together with other products of mines, constituted nearly 62 per cent of the total carload tonnage of all freight. Bituminous coal alone, which undoubtedly has lower terminal charges than brick, constituted 30 per cent of the total tonnage. Cement, brick, and lime represented only 4.7 per cent. The total tonnage of brick used by complainants in the statistical study for the eastern district was about 3,000,000 tons, or less than one-fourth of 1 per cent of the "all-freight" tonnage. Yet, based on tonnage of such a small ratio to the whole, this commodity is put forward as the special commodity which produces a greater average revenue than the weighted-average revenue of the grand mixture of all freight. The impracticability of using the revenue on all freight as an exact yardstick by which to measure the rates on a particular commodity, even though it be low-grade traffic, is illustrated by the circumstance that in *Illinois Zinc Co. v. Director General*, 61 I. C. C., 92, this theory was applied successively by complainants therein to ore from the mines, to spelter from the smelters, and to sheet zinc from the rolling mills. In this case it could be successively applied

to common brick and to the higher grades of brick. If we were to accept the theory that rates on all low-grade commodities should be reduced solely if and because they produced a higher revenue than the average of all freight, such a reduction would result in a lowering of the average which, in turn, would require a further reduction in the rates on the low-grade commodities, and this theory could be extended *ad infinitum*.

In order to show the terminal cost of handling brick traffic in central territory, defendants introduced cost studies based on the so-called Coverston-Saur formula, 1920. This formula comprises 67 of the 197 operating expense accounts, aggregating approximately 87.5 per cent of the total operating expenses. The studies were made on the basis of tests at various stations in central territory on the Cleveland, Cincinnati, Chicago & St. Louis Railway and the Pennsylvania system, covering 639 cars on the former road and 704 cars on the latter. The combined average terminal costs applicable to the brick traffic as derived from these studies made in the latter part of 1919 and the early part of 1920 at 16 originating stations and 13 destination stations are:

Originating stations.....	18.22 cents per ton.
Destination stations.....	24.15 cents per ton.
Combined terminal direct costs (87.5 per cent).....	{ 42.37 cents per ton. \$15.88 per car.
Direct terminal costs raised to 100 per cent.	{ 48.42 cents per ton. \$18.16 per car.

Applying an operating ratio of 66.67 per cent, the ratio used in the *C. F. A. Class Scale case*, 45 I. C. C., 254, 272, and in other cases, the terminal factor becomes 63.56 when the ratio is applied to the cost figure 42.37, and 72.63 cents per ton when applied to that cost figure raised to cover 100 per cent of the direct costs.

Below is a statement giving the average cost per car of the various elements as taken from the exhibits:

	Cleveland, Cincinnati, Chicago & St. Louis.			Pennsylvania system.			Grand average.
	Highest- cost station.	Lowest- cost station.	Average.	Highest- cost station.	Lowest- cost station.	Average.	
Originating stations:							
Clerical cost.....	\$1.00	\$0.18	\$0.35	\$0.64	\$0.21	\$0.45	\$0.41
Car-detention cost.....	5.91	.76	3.88	3.51	.66	1.57	2.41
Switching cost.....	7.62	3.54	4.84	6.25	1.14	3.35	3.90
Total cost.....	11.10	4.62	9.07	9.33	2.14	5.37	6.72
Destination stations:							
Clerical cost.....	.60	.20	.32	.33	.19	.28	.30
Car-detention cost.....	4.09	1.81	2.98	6.27	3.26	4.47	3.48
Switching cost.....	6.29	2.21	4.53	9.66	3.27	7.02	5.38
Total cost.....	9.27	4.57	7.83	14.49	7.61	11.77	9.16
Total.....			16.90			17.14	15.88

Complainants direct attention to the large variance in the cost per car for the different items. It will be observed that the clerical cost per car varies from 18 cents to \$1; that the car-detention cost varies from 66 cents to \$6.27; and that the switching cost varies from \$1.14 to \$9.66. While it is not questioned that the figures shown reflect the actual conditions as they existed at the time of the cost studies at the stations covered, and while these studies are instructive and are entitled to consideration along with other factors, they can not be accepted as conclusive of the terminal costs for the brick traffic as a whole. Many of the tests were for three-day periods and none of the tests exceeded seven days. In a proceeding of this character dealing with the whole brick-rate structure, too much weight should not be given to terminal costs based on tests at comparatively few points and for short periods.

RATE ADJUSTMENT IN CENTRAL AND TRUNK-LINE TERRITORIES—
INDIANA-ILLINOIS ADJUSTMENT.

On eastbound traffic from central to trunk-line territory the rates are normally based on established percentages of the Chicago-New York rate.

The following table, in cents per 100 pounds, shows the changes in the basis for rates on brick, Chicago, to New York, since 1899:

Effective date.	Fire brick.	Building brick. ¹	Paving brick.
	Cents.	Cents.	Cents.
Dec. 8, 1899.....	25	25	22.5
May 19, 1900.....	25	22.5	20
Aug. 14, 1900.....	25	20	20
Jan. 1, 1908.....	22.5	22.5	22.5
Mar. 15, 1910.....	21	21	21
Jan. 1, 1915 (Five Per Cent case).....	22.1	22.1	22.1
Mar. 25, 1918 (Fifteen Per Cent case).....	25.5	25.5	25.5
June 25, 1918 (General Order No. 28).....	27.5	27.5	27.5
Aug. 26, 1920 (Ex parte 74).....	38.5	38.5	38.5

¹ Building-brick rates also applicable on hollow building tile.

The 21-cent rate effective March 15, 1910, was established following our decision in the *Metropolitan Brick Company case, supra*, that a 21-cent base rate, scaled down in the usual manner of established percentages to intermediate points, should be applied as a maximum on shipments from central territory to trunk-line territory.

Since prior to 1911 there has been a well-defined freight-rate structure on brick in central territory and westbound from trunk-line territory to central territory, with established groups of producing points differentially related. On such traffic the western Pennsylvania, western New York, and Ohio producing districts are grouped

for rate-making purposes, these groups being limited largely by commercial considerations and the rate relationships being determined by consideration of average distances, as well as of commercial competition.

Following the principle announced in *Metropolitan Brick Company case*, that fire, building, and paving brick should be classified together for rate-making purposes, the carriers also revised their practice in this respect within central territory. The resulting adjustment is known as the 1911 brick-rate adjustment. On short-haul traffic fire, building, and paving brick were, as a general rule, carried at the same rate, and there was therefore not the same need for revision of such rates, and only incidental adjustments were made. Because of the enormous tonnage of brick, principally paving brick, produced at Canton, Ohio, that point had long been recognized as a basing point on westbound traffic. The Wheeling & Lake Erie Railway, which was interested principally in paving brick, was the controlling factor in the rates from that point.

The following table of rates per ton of 2,000 pounds shows the changes in the base rates on brick from Canton to Chicago from April, 1906, to August 26, 1920:

Date.	Fire brick.	Building brick. ¹	Paving brick.
Apr. 25, 1906.....	\$2.00	\$2.20	\$1.50
June 1, 1910 ²	1.65	2.20	1.50
Mar. 1, 1911.....	1.65	1.65	1.65
Jan. 1, 1915 (Five Per Cent case).....	1.74	1.74	1.74
May 20, 1918 (Fifteen Per Cent case).....	2.00	2.00	2.00
June 25, 1918 (General Order No. 28).....	2.40	2.40	2.40
Aug. 26, 1920 (Ex parte 74).....	3.36	3.36	3.36

¹ Building-brick rates also applicable on hollow building tile.
² Wheeling & Lake Erie maintained 1906 rates until July 28, 1910, when it established rates of \$1.65 on fire brick and \$1.50 on building and paving brick.

As shown, on March 1, 1911, the base rate from Canton to Chicago was made \$1.65 per ton on fire, building, and paving brick, the \$1.65 rate having been established on fire brick June 1, 1910. In effecting this revision of rates the carriers first sought to establish a rate of \$1.75 per ton, but owing to opposition on the part of the Wheeling & Lake Erie, the rate was made \$1.65. This represented a reduction of 35 cents per ton on fire brick, 55 cents per ton on building brick, and an increase of only 15 cents per ton on paving brick.

To Chicago the Canton rates also applied from 11 other districts in Ohio and Kentucky—the Cambridge, Cleveland, Columbus, Coshoc-ton, Ashland, Athens, Delaware, Marietta, Portsmouth, Shawnee, and Zanesville districts, the average distance from the Canton group to Chicago being about 371 miles. From other producing districts in

eastern Ohio and western Pennsylvania the rates were made the following amounts per ton over the Canton group rate to Chicago:

Youngstown (also known as Mahoning).....	\$0.10
Steubenville.....	.20
Pittsburgh.....	.30
Connellsville.....	.60
Johnstown.....	.80
Clearfield.....	1.00
Watsonstown.....	1.40

The Watsonstown differential was established as the result of *Watsonstown Brick Co. v. Northern Central Ry. Co.*, unreported, decided in 1915.

A number of smaller groups in western Pennsylvania were also differentially related to Canton, or to Pittsburgh which in turn was related to Canton.

Concurrently with the establishment of the \$1.65 rate, Canton to Chicago, rates were established to Toledo, Ohio, Indianapolis, Ind., East St. Louis, Ill., and certain other points applicable to all kinds of brick and also hollow building tile to serve as a foundation for checking in rates to all points in central territory. A summary of these rates introduced as an exhibit shows an average reduction of 42.3 cents per ton on fire and building brick and an average increase of only 11.4 cents per ton on paving brick, with an average net reduction of 30.9 cents. The same measure of reduction applied from districts grouped with or over Canton. It does not appear, however, that the distinction between fire, building, and paving brick had been theretofore strictly observed in view of the difficulties, previously referred to, of distinguishing between the different kinds of brick. In the *Metropolitan Brick Company case* we found that to a considerable extent, at least prior to 1906, the classification was not observed and that a large proportion of all brick had been shipped on the lowest rate.

Under the 1911 adjustment, and prior to that time, the Cincinnati Northern Railroad was treated as a common boundary where the rates from the Canton group, on the one hand, and Terre Haute and Brazil, Ind., and Danville, Ill., on the other hand, equalized for substantially similar distances. To points west of that line the Indiana-Illinois points had a lower basis of rates, while to points east of that line the Canton group had a lower basis of rates than the Indiana-Illinois points, and vice versa, the amounts over or under the rates to the Cincinnati Northern line being dependent on distance.

The following table shows from various brick-producing points in eastern Ohio, western Pennsylvania, Indiana, Illinois, and from Louisville and Ashland, Ky., to Chicago, the mileages, the present rates, the 1911 rates, the 1911 differentials over or under the Dan-

ville, Ill.,—Attica, Ind., group, and the average from the various groups, using the mileages shown in complainants' exhibit.

Group.	From—	Distance.	Present rate. ¹	1911 rate.	1911 differential over or under Danville-Attica. ²	Average distance.
		Miles.			Cents.	Miles.
1	Omitted as not involved.....					
2	Joliet, Ill.....	37	\$0.90	\$0.50	—30	37
3	{Ottawa, Ill.....	84	1.10	.65	—15	87
	{Streator, Ill.....	90	1.10	.65	—15	
4	La Salle, Ill.....	99	1.10	.70	—10	99
	{Galesburg, Ill.....	163	1.40	.95	15	174
	{Monmouth, Ill.....	179	1.40	.95	15	
	{Abingdon, Ill.....	172	1.40	.95	15	
	{Canton, Ill.....	181	1.40	.95	15	
6	Clinton, Iowa.....	138	1.50	1.00	20	138
7	Springfield, Ill.....	185	1.40	1.15	35	185
8	Alton, Ill.....	258	1.00	1.20	40	258
9	St. Elmo, Ill.....	225	1.60	1.20	40	225
10	{East St. Louis, Ill.....	279	1.80	1.30	50	281
	{St. Louis, Mo.....	282	1.80	1.30	50	
11	Murphysboro, Ill.....	316	1.80	1.40	60	316
12	{Mount Vernon, Ill.....	276	1.70	1.30	50	270
	{Albion, Ill.....	263	1.70	1.30	50	
13	{Danville, Ill.....	123	1.20	.80	121
	{Attica, Ind.....	119	1.40	.80	.....
	{Veedersburg, Ind.....	131	1.50	.90	10	
14	{Crawfordsville, Ind.....	147	1.50	.90	10	147
	{Cayuga, Ind.....	141	1.50	.90	10	
	{Hillsdale, Ind.....	155	1.50	.90	10	
	{Clinton, Ind.....	163	1.50	.90	10	
	{West Melcher, Ind.....	155	1.50	.95	15	
15	{Mecca, Ind.....	160	1.60	.95	15	170
	{Carbon, Ind.....	178	1.60	.95	15	
	{Brazil, Ind.....	180	1.60	.95	15	
	{Terre Haute, Ind.....	178	1.60	.95	15	
	{Logansport, Ind.....	118	.....	.85	5
16	{La Fayette, Ind.....	120	1.40	.85	5	119
	{Brooklyn, Ind.....	216	1.70	1.05	25	
17	{Martinsville, Ind.....	226	1.70	1.05	25	222
	{Bloomfield, Ind.....	225	1.70	1.05	25	
18	{Vincennes, Ind.....	236	1.80	1.20	40	257
	{Loogootee, Ind.....	260	1.80	1.20	40	
	{Brownstown, Ind.....	265	1.80	1.20	40	
	{Kokomo, Ind.....	140	1.60	.95	15	
	{Marion, Ind.....	152	1.60	.95	15	
19	{Fairmount, Ind.....	164	1.60	.95	15	178
	{Hartford City, Ind.....	177	1.60	.95	15	
	{Alexandria, Ind.....	171	1.60	.95	15	
	{Muncie, Ind.....	181	1.60	.95	15	
	{Anderson, Ind.....	177	1.60	.95	15	
20	{Shirley, Ind.....	193	1.60	.95	15	190
	{New Castle, Ind.....	198	1.60	.95	15	
21	Red Key Ind.....	190	1.60	1.00	20	190
22	Portland Ind.....	201	1.80	1.15	35	201
23	Evansville, Ind.....	286	2.10	1.55	75	286
	{Louisville, Ky.....	204	2.30	1.55	75	208
	{Jeffersonville, Ind.....	292	2.30	1.55	75	
	{New Albany, Ind.....	300	2.30	1.55	75	
	{Cincinnati, Ohio.....	285	2.30	1.55	75	
24	Canton group:					285
	Canton district.....	367	2.40	1.65	85	371
	Cleveland district.....	390	2.40	1.65	85	
	Cambridge district.....	397	2.40	1.65	85	
	Marietta district.....	448	2.40	1.65	85	
	Coshocton district.....	357	2.40	1.65	85	
25	Zanesville district.....	374	2.40	1.65	85	
	Columbus district.....	305	2.40	1.65	85	
	Ashland district.....	424	2.40	1.65	85	
	Portsmouth district.....	392	2.40	1.65	85	
	Athens district.....	392	2.40	1.65	85	
	Shawnee district.....	364	2.40	1.65	85	
	Delaware district.....	292	2.40	1.65	85	
26	Youngstown group.....	406	2.50	1.75	95	406
27	Staubenville group.....	444	2.60	1.85	105	444
28	Pittsburgh group.....	468	2.70	1.95	115	468

¹ Present rates shown are those in effect prior to *Ex parte 67, Illinois Classification*, 56 I. C. C., 657.

² The minus sign (—) indicates differential under Danville-Attica.

With a few exceptions the rates to Milwaukee, Wis., under the 1911 adjustment were 40 cents per ton over Chicago, not only with respect to traffic from Danville and related points but also with respect to traffic from Canton and groups east. On this basis, the rate from the Ottawa-Streator group to Milwaukee, 172 miles, was 10 cents higher than the rate from the Galesburg group to Chicago, for the corresponding distance of 174 miles. Under the successive general increases prior to *Ex parte 74* the 40-cent arbitrary, Milwaukee over Chicago, was continued in effect with respect to traffic from Canton and groups east and from many of the groups in Indiana and Illinois.

The departures indicated from the 1911 adjustment have been due principally to the rule for the disposition of fractions in applying the various general increases and to the failure of the State commissions to permit on intrastate traffic from Indiana-Illinois producing points such increases as were authorized by this commission on interstate traffic in *The Five Per Cent case*, 31 I. C. C., 351, and *The Fifteen Per Cent case*, 45 I. C. C., 303.

The Indiana-Illinois adjustment.—The carriers failed to secure the increase of 15 per cent in their intrastate rates on common brick in Indiana and also failed to secure the 5 and 15 per cent increases in their intrastate rates on all brick in Illinois, resulting to the disadvantage of shippers in Indiana and also in Ohio and other States. Articles formerly taking brick rates were separated from brick by the Illinois commission, which allowed the 5 per cent increase on the articles but no corresponding increase on brick. The 5 per cent increase from Danville to Chicago on the articles was lost in disposing of fractions under General Order No. 28. Under a freight rate authority issued by the Director General of Railroads, articles which had been separated from brick by the action of the Illinois commission received a 25 per cent increase instead of the flat increase of 40 cents per ton under General Order No. 28. This reduced the Danville-Chicago rate of \$1.20 per ton, established on June 25, 1918, to \$1.10 on the articles that were formerly included in the brick list, and this rate was in effect at the time of the hearing. Following our recommendations to the director general in *Illinois Classification, supra*, that, as a temporary measure, certain relief should be afforded Indiana producers from discrimination in favor of Illinois producing points, Danville, Galesburg, Decatur, and Springfield, Ill., and Crawfordsville, Veedersburg, Attica, Cayuga, Hillsdale, Clinton, Terre Haute, and Brazil, Ind., were grouped with respect to rates on brick, other than common, to Chicago and given a rate of \$1.40 per ton. This resulted in a further disruption of the differential adjustment. Among other things, it resulted from some producing

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points in higher rates on common brick than on face brick, the common-brick rate from Terre Haute to Chicago, for example, remaining unchanged at \$1.60 while the face-brick rate became \$1.40. For the carriers it is stated that the present adjustment is inconsistent and indefensible for the following reasons:

1. It gives brick other than common from certain producing points to Chicago a lower rate than common brick.

2. It creates a discrimination against Danville in favor of all other Illinois producing points because the Danville rates were increased 5 per cent and the latter points were not, thereby disturbing the former relationship.

3. The establishment of a common rate on brick other than common, from Danville and other Illinois and Indiana producing points to Chicago, creates a discrimination against Danville because it wipes out the differential relationship established in 1911, thereby putting points like Brazil and Galesburg, which formerly took a differential of 15 cents per ton over Danville, on an equality with Danville.

4. The increases of 5 and 15 per cent in the rates from Indiana producing points to Illinois destinations other than Chicago created a discrimination against those points in favor of Illinois producing points which received no increase.

Fixed differentials.—Complainants seek to have the differential basis as it existed under the 1911 adjustment restored with certain modifications, and urge that the differentials should remain fixed, regardless of fluctuations in the general level of the rates.

In *Ex parte 74*, in considering the question of the maintenance of differentials, we recognized the desirability of restoring recognized relationships where serious hardship would result from the general percentage increases, but pointed out the impracticability of adjusting at that time all of the rates on individual commodities.

The 1911 adjustment was made by the carriers after an exhaustive rate check and consideration of the competition between the various producing points. The differential basis was recognized by us in *The Five Per Cent case* and *The Fifteen Per Cent case* by providing that the increases in the rates on brick authorized therein should be applied to the Canton base rate and the established differentials preserved. While this resulted in smaller percentage increases from the groups whose rates were based differentially over Canton than were made in the base rates from Canton, the greater departures from the full percentage increases were reflected in the rates from the groups east of Pittsburgh, affecting only a comparatively small portion of the tonnage. The increases under General Order No. 28 amounted to more than 25 per cent on rates of \$1.30 or less; to 25

per cent on rates from \$1.40 to \$1.70; and to less than 25 per cent on rates of \$1.80 or more. Based on a 10-day study by the carriers covering the actual movement of brick and tile in central territory, and from central to trunk-line territory, the increase in rates under General Order No. 28 averaged approximately 35 per cent. Business was built up under this rate structure of groups differentially related, and, as it appears to have resulted in general satisfaction to shippers and carriers alike, it is highly desirable that this differential adjustment should be restored and maintained if it can be done without unduly affecting the revenues of the carriers. In this connection it should be observed that, brick being a low-grade product which enters into competition largely with concrete, of which the only constituent undergoing any substantial rail transportation is cement, there is a rate level beyond which brick will not freely move and that factor, although difficult of exact determination, should be given due weight in considering the effect on the carriers' revenues of increases or reductions in rates. So far as the ability of the producing points in central and trunk-line territories to ship in competition with each other is concerned, that factor may fairly be regarded as having been substantially reflected in the differential adjustments voluntarily established by the carriers in those territories.

Complainants propose a rate of \$1 from the Ottawa group to Chicago as the base rate. Applying the 1911 differentials or differences in rates, this would result in a rate of \$1.15 from Danville and \$2 from Canton. The 40 per cent increase under *Ex parte 74*, applied to the rate asked of \$1 from Ottawa to Chicago, would result in an increase of 30 cents per ton in the present rate from Ottawa, and, observing the spread as it existed in 1911 of \$1 per ton, Canton over Ottawa, would result in no change in the rates from Canton and from points east. The Indiana-Illinois carriers agree generally with complainants that the 1911 adjustment should be restored and preserved, so far as the Indiana-Illinois adjustment is concerned, but urge that the Danville-Attica group should be taken as the base and that no reduction should be made in the present rate of \$1.40 from the Danville-Attica group to Chicago, which rate represents the 1911 rate increased under *The Five Per Cent case*, *The Fifteen Per Cent case*, and General Order No. 28. Danville and Attica, being more nearly centrally located with respect to this general producing territory, are obviously the more logical basing points to be used under a fixed differential adjustment.

The carriers point to the serious effects on their revenues which would result from maintaining the 1911 difference in rates as between Danville or Attica and Canton to Chicago, in applying the increases

under *Ex parte 74*. While under the 1911 adjustment the rate from the Canton group to Chicago happened to be 85 cents higher than the Danville-Attica rate to Chicago, complainants and defendants agree that there was never any fixed relationship between Danville and Attica, on the one hand, and Canton on the other, with respect to the rates to Chicago. Prior to *Ex parte 67* the spread was \$1.20, and prior to *Ex parte 74*, \$1. Since *Ex parte 74* it has been \$1.40.

Upon consideration of all the facts of record, and giving due weight to the favorable transportation characteristics of brick, the establishment of the uniform brick list as prescribed herein with a minimum of 60,000 pounds, the large volume of movement to Chicago, and the differential adjustment, we find that the present interstate rates on articles in the uniform brick list, in carloads, from Indiana-Illinois producing points, and from Canton and points grouped therewith or related thereto, to Chicago and to Milwaukee, and to points taking the same rates, will be unjust and unreasonable to the extent that they exceed rates constructed in accordance with the bases shown below, including the increases under *Ex parte 74*:

Base rate, Danville-Attica group to Chicago and points taking Chicago rate... \$1. 75

Rates from related brick-producing points to Chicago to be made fixed differentials over or under the base rate from the Danville-Attica group as follows:

From—	Differential over or under Danville- Attica. ¹	From—	Differential over or under Danville- Attica.
	Cents.		Cents.
.....	-30	To	15
.....	-15	L	5
.....	-15	L	5
.....	-10	B	25
.....	15	M	25
.....	15	B	25
.....	15	V	40
.....	15	L	40
.....	20	B	40
.....	20	K	15
.....	40	M	15
.....	40	F	15
.....	50	H	15
.....	50	A	15
.....	50	M	15
.....	50	A	15
.....	50	S	15
.....	10	N	15
d.	10	R	20
.....	10	P	25
.....	10	E	75
.....	10	L	75
.....	15	J	75
.....	15	N	75
.....	15	C	75
.....	15		

¹ The minus sign (-) indicates differential under Danville-Attica.

Rate from Danville and Attica and related points to Milwaukee to be made by adding an arbitrary of 40 cents to the rate to Chicago.

Base rate from Canton group to Chicago and points taking Chicago rate..... \$3. 15

Rates from related brick-producing points to Chicago to be made fixed differentials over the base rate from the Canton group as follows:

From—	Differen- tial over Canton.	From—	Differen- tial over Canton.
	Cents.		Cents.
Youngstown, Ohio, group.....	10	Johnstown, Pa., group.....	80
Steubenville, Ohio, group.....	20	Clearfield, Pa., group.....	100
Pittsburgh, Pa., group.....	20	Watson town, Pa., group.....	140
Connellsville, Pa., group.....	60		

Other groups in western Pennsylvania to be related to the Canton group in accordance with the 1911 differential adjustment.

Rates from Canton and related points to Milwaukee to be constructed by adding an arbitrary of 40 cents per ton to the rate to Chicago.

Complainants ask for certain changes in the 1911 adjustment with respect to certain territories of destination, but the principal argument advanced in support of these changes is based on the element of distance, and the evidence submitted does not warrant generally the departures sought from this adjustment which, in so far as it has remained undisturbed, has proved generally satisfactory to the shippers and has not led to complaint. Aside from the general level of the rates, complainants' principal grievance lies in the departures from that adjustment. However, the 1911 differential from Springfield, Ill., of 35 cents over the Danville-Attica group on traffic to Chicago was clearly out of line, and, as found above, should not exceed 20 cents.

From Attica to Chicago the movement is interstate, the direct route being by way of the Chicago & Eastern Illinois Railroad, while from Danville to Chicago the Chicago & Eastern Illinois has a direct intrastate route and the New York Central a direct interstate route. It is manifest that the integrity of the uniform brick list as applied to interstate traffic from Danville and Attica to Chicago and the adjustment prescribed herein for interstate traffic can not be maintained if, as under the present adjustment, a rate be maintained for the intrastate transportation of certain articles in the uniform brick list from Danville to Chicago lower than is contemporaneously maintained for the interstate transportation of other articles in the uniform brick list from Danville to Chicago and of all of such articles from Attica to Chicago.

We find that the circumstances and conditions surrounding the intrastate movement of articles in the uniform brick list, in carloads, from Danville to Chicago are substantially similar to those surrounding the interstate transportation of like traffic from Danville and Attica to Chicago. We further find that the present intrastate car-

load rates from Danville to Chicago on each or any of the articles in the uniform brick list prescribed herein, to the extent that such rates are lower than the interstate carload rates contemporaneously maintained by defendants on any of the articles in the uniform brick list from Danville and Attica to Chicago, are, and for the future will be, unduly prejudicial to Attica and to shippers of brick and other clay products in interstate commerce from Danville and Attica to Chicago, unduly preferential of shippers of brick and other clay products in intrastate commerce from Danville to Chicago, and unjustly discriminatory against interstate commerce; and that to remove such undue prejudice, undue preference, and unjust discrimination a rate shall be established and maintained for the intrastate transportation from Danville to Chicago of articles in the uniform brick list prescribed herein, in carloads, which shall not be lower than the corresponding rate contemporaneously maintained by defendants for the interstate transportation of like traffic from Danville and Attica to Chicago.

Except as otherwise found herein, the restoration of the 1911 differential adjustment with relation to the base rate from Danville and Attica to Chicago seems to be clearly indicated as the proper adjustment to be made not only as to interstate rates but also as to intrastate rates governing transportation within Illinois and within Indiana from brick-producing points competing with Danville and Attica. However, we feel that, apart from the findings *supra* as to rates from Danville to Chicago, we should not at this time, without affording the authorities of the States of Indiana and Illinois an opportunity to cooperate with each other and with us in making the necessary readjustments in their respective intrastate rates to harmonize with the rates prescribed herein on interstate traffic, make any definitive finding or enter any rigid order with respect to Indiana and Illinois intrastate rates which might have the effect of limiting or embarrassing the State authorities in the exercise of their power to control intrastate rates, in the absence of any proved undue prejudice or unjust discrimination against shippers, localities, or particular varieties of traffic carried in interstate commerce. Such a procedure is consonant with the suggestion made by the Supreme Court of the United States in its recent decision in *Railroad Commission of Wisconsin v. C. B. & Q. R. R. Co.*, decided February 27, 1922.

Wabash Valley group.—The so-called Wabash Valley group, comprising the Danville, Veedersburg, and Terre Haute groups, has been generally recognized as one group in all directions except to northwestern Illinois and to western trunk-line territory, including Wisconsin, and to southwestern-lines territory. Under our decision in *Ex parte 67* it was treated as one group with respect to the rates to Chicago. Complainants, while not objecting to the division of this

group with respect to traffic to Chicago and Milwaukee and intermediate points, insist that it should not be divided with respect to traffic to the other territories named and that to Indiana-Illinois local points of destination rates should be applied from the individual plants with equal differentials in opposite directions. Defendants admit that on traffic to St. Louis the Wabash Valley group should be treated as one group. They contend that that is a local adjustment and that traffic east of the Mississippi River may properly be treated as a part of the central-territory adjustment, but that with respect to traffic to points west of the Mississippi River a different adjustment controls; that Terre Haute and Brazil are in the Cincinnati group as fixed by the southwestern railroads, while the Chicago rates are observed as maxima from Danville, due to the fact that the New York Central and Chicago & Eastern Illinois Railroads operate from Chicago through Danville to St. Louis. Defendants cite *Commercial Club of Terre Haute v. V. R. R. Co.*, 29 I. C. C., 383, in which we found that the rates from Indiana points outside the influence of the line of the New York Central and the Chicago & Eastern Illinois to St. Louis should be on the central-territory basis, and urge that no exception should be made on brick with respect to the relative rates from Terre Haute and Danville. That case, however, dealt with the prayer of Terre Haute for the Chicago basis of rates on classes and commodities generally, on the ground that that basis was extended to Milwaukee and certain Indiana-Illinois points, including Danville. It is not controlling on the issue here presented. Defendants' argument is based solely on the exigencies of the carriers and the fact that the New York Central has elected to participate by way of Danville in traffic to points beyond St. Louis, and fails to give any consideration to the substantial parity in distance from the several points in the group, considering the length of the hauls, to points west of the Mississippi River, to the close competition which exists between brick manufacturers in the several groups comprising the Wabash Valley group, and to the fact that practically no brick is produced in Chicago except common brick. The Wabash Valley group is geologically, commercially, and competitively one group with respect to the rates on brick, mining the same vein of coal and using the shale underlying this coal at both extremes of the group, Danville and Terre Haute. Under such circumstances the failure to treat it as a single group on long-haul traffic under the group adjustment of rates, while recognizing the propriety of treating it as a single group on traffic to the East and to the gateway through which the traffic moves to the West, is clearly illogical. The reasons which justify the separation of this group with respect to traffic to Chicago, namely, the short haul, the relative differences in distance considering the length of the haul, and the fact that Chicago is one of the largest brick-

consuming markets in the country, do not obtain with respect to long-haul traffic.

We find that except for the adjustment to Chicago and Milwaukee, hereinbefore referred to, the failure of defendants to treat the Wabash Valley group as one group in all directions on long-haul traffic is, and for the future will be, unjust and unreasonable. On short-haul interstate traffic from points within this group to Indiana-Illinois points the central-territory distance scale hereinafter set forth should be observed as maximum, subject to the group and differential adjustment to Chicago and related points.

Eastbound rates from Pittsburgh and related groups and from points west of Pittsburgh.—Prior to June 25, 1918, rates from various groups in central and western Pennsylvania were on the basis of fixed differentials below the Pittsburgh group base rate to New York of \$3.10 per ton. Pittsburgh is in 60 per cent territory under the Chicago-New York percentage basis, on which basis the Pittsburgh rate prior to *Ex parte 74* would have been \$3.30, but the application of the flat 40-cent increase under General Order No. 28 resulted in a rate of \$3.50. Complainants propose a base rate from Pittsburgh of \$2.70 per ton as prior to *Ex parte 74*. The present rate from Pittsburgh to New York, including the increase under *Ex parte 74*, is \$4.90, while on the basis of 60 per cent of the Chicago-New York rate of \$7.70 per ton, the rate would be \$4.60. The differentials in the various groups under Pittsburgh prior to *Ex parte 74* were, in cents per ton: Johnstown and Brookville (or Johnsonburg) groups, 10 cents; and Clearfield-Cumberland group, 20 cents. Prior to June 25, 1918, the so-called Connellsville group, including the following representative points in Pennsylvania, viz, Butler, Templeton, Connellsville, Fairchance, Grotztown, Jeannette, and Blairsville Intersection, had a differential of 5 cents under Pittsburgh. As a result of the disposition of fractions in applying the increases under General Order No. 28, the Connellsville group was merged in the Pittsburgh group. The differential basis of making rates from points east of Pittsburgh is satisfactory to complainants and apparently also to the carriers. Philadelphia, Baltimore, Boston, and points taking the same rates, took, on traffic from Pittsburgh, established port differentials over and under New York, Philadelphia 40 cents per ton under, Baltimore 60 cents under, and Boston 40 cents over New York. The maintenance of these port differentials was approved in *Ex parte 74* and shippers and carriers agree that they should be maintained.

As previously stated, rates on brick from points west of Pittsburgh are and long have been made on established percentages of the Chicago-New York rate, except to the extent that General Order No. 28 resulted in departures from the established bases. Complainants ask that the Youngstown, Steubenville, and Canton groupings on

westbound traffic be also observed eastbound, and that corresponding differentials should also be maintained from these groups eastbound, i. e., Steubenville, 10 cents; Youngstown, 20 cents; and Canton 30 cents over Pittsburgh. They show that the percentage adjustment eastbound results in varying rates from different portions of these groups. The Steubenville group is partly in 60 per cent territory and partly in 71 per cent territory; the Youngstown group is partly in 66.5 per cent territory and partly in 71 per cent territory; the Canton group is in various percentage territories ranging from 71 per cent for a portion of the Canton district to 82 per cent, on classes and commodities generally, for the Ashland-Portsmouth district.¹ However, the groupings on westbound traffic, due to the influence of the Chicago market, were the result of carrier and commercial competition which are not controlling on eastbound traffic. Furthermore, the relative location of points in these groups with respect to New York and Chicago renders the groupings less logical on traffic to New York than on traffic to Chicago.

The average distances as shown by complainants from the Pittsburgh, Steubenville, Youngstown, and Canton groups to New York, and from the same groups westbound to Chicago, are as follows:

To New York from—	Distance.	To Chicago from—	Distance.
	<i>Miles.</i>		<i>Miles.</i>
Pittsburgh group.....	447	Canton group.....	371
Steubenville group.....	498	Youngstown group.....	408
Youngstown group.....	520	Steubenville group.....	444
Canton group.....	620	Pittsburgh group.....	468

To Chicago the difference in distance between Canton and Portsmouth, representative points in the Canton group, is but 25 miles, while to New York the difference in distance between Canton and Portsmouth is 130 miles.

As stated, while complainants contend that the general level of rates in both central and trunk-line territories is too high, they do not question the propriety of the relatively higher level of rates in trunk-line than in central territory. Prior to *Ex parte 74*, from the Pittsburgh group, in 60 per cent territory, the \$3.30 rate on brick to New York which would have applied on the 60 per cent basis, was approximately 122 per cent of the rate of \$2.70 to Chicago. A like percentage, applied to the rate of \$3.45 prescribed herein from the Pitts-

¹ For many years brick and certain other commodities manufactured in the Ashland-Portsmouth district have been accorded commodity rates from that district on basis of 77 per cent to eastern port cities, and 82 per cent to interior eastern points where the distances are relatively greater than to New York. The policy of the carriers in maintaining that adjustment was recognized and approved in *Jobbers' & Mfrs' Bureau of Huntington v. A. C. R. R. Co.*, 57 I. C. C., 64, and *Board of Trade of Portsmouth v. A. C. R. R. Co.*, 57 I. C. C., 78.

burgh group to Chicago, would result in a rate of \$4.20 from Pittsburgh to New York.

The rate on brick from New York to Chicago is 42 cents per 100 pounds, including the increase under *Ex parte 74*, while, as stated, the rate from Chicago to New York is 38.5 cents. In view of the large number of brick-producing points in western Pennsylvania and central territory with a much lower basis of rates, there would not normally be any movement on basis of the 42-cent rate from New York to Chicago. However, defendants maintain on chrome, magnesite, and silica brick, high-grade fire brick from Chester, Pa., in Philadelphia rate territory, a rate of 31 cents to Chicago and 36 cents to St. Louis, a 117 per cent point. From Baltimore, Md., and Baltimore rate points to St. Louis the rate is 35 cents. Observing the port differentials and the percentage basis, these rates are equivalent to a base rate of 33 cents from New York to Chicago. This basis of rates from Chester and Baltimore was established prior to *The Five Per Cent case* and the present rates represent the subsequent general increases. Defendants also have maintained for a number of years from Danville and Joliet, 100 per cent points, to eastern destinations, rates on these commodities on the same basis as apply westbound from Chester and Baltimore. By schedules filed to become effective December 15, 1921, the carriers have now proposed to establish a rate of 38.5 cents on chrome, magnesite, and silica brick and on other fire brick from St. Louis and Vandalia, Mo., to New York, or on basis of 117 per cent of the rate from Danville and Joliet. No change is proposed by the carriers in the rates on other kinds of brick from St. Louis and Vandalia, nor is any change proposed by them in the base rate of 38.5 cents applicable on brick generally from Chicago to New York or in the rates on fire brick from other points in central territory usually related to St. Louis. Upon protests the operation of the schedules was suspended in Investigation and Suspension Docket No. 1454 until May 14, 1922, and the matter of the classification and rate adjustment on all kinds of brick from St. Louis and related points to eastern destinations is now pending before us in No. 10733.

We find that under the general readjustment of rates herein required the present rate on articles in the uniform brick list in carloads from Pittsburgh to New York will be unreasonable, and that a maximum reasonable base rate to apply from the Pittsburgh or 60 per cent group to New York will be \$4.20, including the increase under *Ex parte 74*.

The percentage basis of rates on eastbound traffic from points west of the Pittsburgh group has been in force for many years, and no justification appears on this record for substituting for that adjustment the differential basis proposed by complainants. We are of opinion, however, that the Chicago-New York rate of 21 cents

prescribed in 1910, and on which these rates are based, has, by reason of the successive general increases, become too high to permit the free movement of this desirable heavy-loading traffic between central and trunk-line territories, a situation which detracts from, rather than adds to, the revenues of the carriers. We have prescribed a rate of \$3.45 from Pittsburgh to Chicago and a substantially higher rate of \$4.20 from Pittsburgh to New York. The sum of these rates equals approximately the rate from Chicago to New York. On traffic moving between the higher and lower rated territories a composite rate somewhat lower than the present Chicago-New York rate would appear to be justified.

We find that under the general readjustment of rates prescribed herein the present rates on articles in the uniform brick list, in carloads, between Chicago and New York and from percentage groups west of the Pittsburgh group to New York will be unreasonable; that a maximum reasonable base rate to apply between Chicago and New York will be 33 cents per 100 pounds, or \$6.60 per ton; and that rates from points west of the Pittsburgh, or so-called 60 per cent, group should not exceed rates scaled down in the usual manner in accordance with the established percentage bases. This will result in rates to New York of 22 cents per 100 pounds, or \$4.40 per ton, from Youngstown, in 66.5 per cent territory; 23.5 cents per 100 pounds, or \$4.70 per ton, from Canton, in 71 per cent territory; 28.5 cents per 100 pounds, or \$5.70 per ton, from Cincinnati, in 87 per cent territory; and 38.5 cents per 100 pounds, or \$7.70 per ton, from St. Louis, in 117 per cent territory. The port differentials over and under New York should be maintained, as well as the differentials under Pittsburgh of 10 cents per ton from the Johnstown and Brookville groups, and 20 cents per ton from the Clearfield group. The Connellsville group as it existed prior to June 25, 1918, should also be restored and maintained with a differential of 5 cents per ton under the rates from Pittsburgh. We further find that the adjustment of rates above set forth will be just and reasonable.

Short-haul rates.—Short-haul rates on brick are checked in specifically and have no relationship to the group rates. In 1911 the carriers in central territory constructed an unpublished distance scale with a view to using it as a guide in checking in rates on this traffic for distances of 100 miles and less. The following table shows the 1911 scale as increased under subsequent general rate increases; also what the scale would have been if increased 25 per cent on June 25, 1918, instead of 40 cents per ton under General Order No. 28:

Distances.	Rates, 1911.	Rates under 5 per cent advance.	Rates under 15 per cent advance.	Rates under General Order No. 28.	Rates under 25 per cent advance.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
10 miles and under.....	40	42	50	90	60
20 miles and over 10.....	50	53	60	100	80
30 miles and over 20.....	60	63	70	110	90
40 miles and over 30.....	60	63	70	110	90
50 miles and over 40.....	70	74	90	130	110
60 miles and over 50.....	70	74	90	130	110
70 miles and over 60.....	80	84	100	140	130
80 miles and over 70.....	90	95	110	150	140
90 miles and over 80.....	100	105	120	160	150
100 miles and over 90.....	100	105	120	160	150

The scale was designed to serve as a minimum-rate basis, but railroad and commercial competition and the necessities of the traffic resulted in departures, generally downward, from the scale, and the short-haul rates checked in under the 1911 adjustment were as a rule materially lower than the scale.

Upon the facts of record we are of opinion and find that the present interstate short-haul rates on articles in the uniform brick list, in carloads, applying within central territory, including all points in Illinois, and within trunk-line territory, respectively, will be unreasonable to the extent that they exceed the following scales, including the increases under *Ex parte 74*, except where higher rates result from the group and differential adjustment made with relation to established base rates:

Central territory scale.	Rates per ton.	Central territory scale.	Rates per ton.
	<i>Cents.</i>		<i>Cents.</i>
20 miles and under.....	90	84 miles and not over 101.....	165
21 miles and not over 34.....	105	102 miles and not over 124.....	180
35 miles and not over 48.....	120	125 miles and not over 147.....	195
49 miles and not over 65.....	135	148 miles and not over 150.....	197
66 miles and not over 83.....	150		

Trunk line scale.	Rates per ton.	Trunk line scale.	Rates per ton.
	<i>Cents.</i>		<i>Cents.</i>
15 miles and under.....	90	74 miles and not over 87.....	180
16 miles and not over 25.....	105	88 miles and not over 101.....	195
26 miles and not over 36.....	120	102 miles and not over 117.....	210
37 miles and not over 47.....	135	118 miles and not over 134.....	225
48 miles and not over 59.....	150	135 miles and not over 150.....	240
60 miles and not over 73.....	165		

Other changes in trunk-line territory requested by complainants.—Complainants propose certain changes in the New York Harbor rates as applied to brick from Perth Amboy and Winslow Junction, N. J., and other producing points in trunk-line territory, but it is admitted that these changes, involving the addition of 10 constructive miles to the distance to Jersey City, N. J., in determining the

rate to New York, would place brick upon a different basis from all other commodities. Perth Amboy is about 22 miles and Winslow Junction 104 miles from Jersey City.

We are of opinion and find that the present rates on articles in the uniform brick list, in carloads, from Perth Amboy and Winslow Junction and other producing points in the same districts to New York will be unreasonable to the extent that they exceed the rates which would result from the application of the short-haul rates prescribed herein for the distance to Jersey City plus reasonable charges for the additional service involved in making delivery in New York. On short-haul traffic to Philadelphia and other points in trunk-line territory the producing points in the Perth Amboy district should not be grouped, but the short-haul scale should be applied from the individual points of origin.

Complaint is made of the rates from the Perth Amboy district and Winslow Junction to Boston and other New England points. Complainants also contend that the rates from Waterloo, Va., near Washington, D. C., to New York and Albany, N. Y., and to New England points are out of line as compared with the rates to the same destinations from the Clearfield group with which Waterloo competes in the sale of brick.

Prior to *Ex parte* 74 the rate from the Perth Amboy district to Portland, Me., and points grouped therewith was \$3.70 per ton, the same as the rate from the Clearfield group to Boston and Boston rate points, including Portland. The distance from Clearfield to Boston is about 570 miles, while the distance from Perth Amboy to Portland is about 350 miles. We have prescribed a rate from Clearfield to Boston of \$4.40, and maintaining the present parity of Perth Amboy to Portland with Clearfield to Boston, the rate from Perth Amboy to Portland would also become \$4.40. Prior to *Ex parte* 74 the rate from Winslow Junction to Portland was 30 cents higher than the rate from Perth Amboy to Portland; the rate from Waterloo to Boston was 10 cents higher than the rate from Winslow Junction to Portland; and the rate from Waterloo to Albany, a New York rate point on traffic from Clearfield, was \$3.80 or 50 cents higher than the rate from Clearfield to Albany.

It is impossible on this record to arrive at any final determination of the proper measure of the rates from Perth Amboy, Winslow Junction, and Waterloo to New England destinations, or from Waterloo to Albany, but we are of opinion and find that the rate from the Perth Amboy district to Portland should not in any event exceed the rate of \$4.40 prescribed herein from the Clearfield group to Boston and Boston rate points, that the rate from Winslow Junction to Portland should not exceed \$4.70, that the rate from Waterloo

to Boston should not exceed \$4.80, and that the rate from Waterloo to Albany should not exceed \$4.50, observing the existing destination groupings. In other words, the spreads existing prior to *Ex parte 74* between Clearfield, on the one hand, and Perth Amboy, Winslow Junction, and Waterloo, respectively, on the other, should not be increased.

Waterloo is 233 miles from Jersey City. Prior to *Ex parte 74* the rate from Waterloo to New York for Pennsylvania Railroad waterfront delivery was \$2.60. For New York Central delivery to upper New York City stations, namely, Fordham Station, Claremont Park Station, and Inwood Station, an arbitrary of 80 cents was added to the \$2.60 rate, resulting in a rate of \$3.40. The rate from Clearfield to New York, 350 miles, was the same to all stations in New York City, or \$3.30, which was 10 cents lower than the rate from Waterloo to the stations on the New York Central. We are of opinion and find that the rate from Waterloo to New York, including the increase under *Ex parte 74*, should not exceed \$3.20 for Pennsylvania Railroad delivery, and that in no event should the rate from Waterloo to other stations in New York City exceed the contemporaneous rate from Clearfield to the same stations.

Our findings herein with respect to the rates from Perth Amboy, Winslow Junction, and Waterloo to New England and from Waterloo to Albany and New York are without prejudice to any different conclusions which may be reached on a record dealing more specifically with those particular rate situations.

In the foregoing only the principal adjustments have been mentioned. Various other adjustments are referred to in the testimony. On long-haul traffic the controlling rates, however, in Indiana-Illinois and central territories are the Danville and Canton base rates and in trunk-line territory the Pittsburgh base rate, to which base rates, together with the Chicago-New York rate, the other rates are more or less closely related. Complainants, although opposed to a rigid distance scale, have proposed distance scales in form to be used in constructing rates in these territories. Waiving any question of the measure of the rates constructed under such scales, it is significant that complainants propose numerous departures both upward and downward from the scales, with a view to preserving relationships. No scale can be devised which would reflect all of the various relationships in the brick-rate structure in view of the numerous departures from a strict mileage basis.

Using the base rates herein found reasonable as a guide, the carriers will be expected to check in rates from and to other points not considered herein, following the general plan pursued in making the 1911 adjustment and observing substantially the differentials under that adjustment except to the extent indicated.

NEW ENGLAND TERRITORY.

Rates in New England are on a distance basis and the record does not indicate any dissatisfaction with that basis on the part of shippers in that territory.

SOUTHERN TERRITORY.

The record affords no basis for making any changes in the existing rates in the southern district except such as may flow out of the establishment of the uniform brick list. The gravamen of the complaint as to the South is a lack of commodity rates on brick and hollow building tile. The establishment of the uniform brick list will go far to remove this cause of complaint. Complainants' rate witness, with no personal knowledge of the rate situations involved or familiarity with the general rate structure, proposed various groupings and readjustments with respect to the rates on brick in the South. Most of the readjustments proposed are based on no other foundation than the fact that some rates are higher, distance considered, than certain other rates from producing points to large consuming markets, and that the rates last named were shown on the returned questionnaires as being satisfactory. Many of the rates which it is thus sought to use as base rates are obviously influenced by conditions which do not affect other rates with which it is sought to relate them. Many of the changes proposed are not based on any complaints with respect to the rates to specific points, but are based merely upon what the witness considered a logical adjustment. The southern interveners especially object to any breaking down of the rate structure between central territory and southern territory which would result in a reduction of the rates from the North to the South, and thus permit the northern manufacturers to dispose of their surplus product in the South to the detriment of the southern brick producers. They suggest that the matter of rate levels be left for the carriers and producers to adjust. For defendants it was stated at the hearing that they stood ready and willing to meet all reasonable demands of southern producers in the way of removing discriminations as well as determining the level of the rates.

WESTERN DISTRICT.

But little testimony was offered by complainants as to rates in the western district. Evidence as to the Southwest was introduced by the Texas interveners, but not for the purpose of supporting the complaint or of asking for any changes. Evidence was also introduced by the Kansas gas-belt interests, and certain differences developed as between the brick producers located in the Kansas gas belt and brick producers located in Texas. The western carriers

offered no evidence, pointing out that the rate situation involving brick and other commodities, particularly in the Southwest, is now before us in other cases. No. 10284, *Fort Worth Freight Bureau v. Director General*, now pending, involves the reasonableness of the carload rates on brick and other clay products from Texas points to destinations in Oklahoma, Arkansas, and Louisiana and also the relationship of such rates as compared with the rates from Kansas and Arkansas points to the same destinations. The Texas interveners in this case are complainants in that case and are asking for the establishment of a reasonable distance scale, based on the Shreveport scale, for distances of 450 miles and less, leaving the present group basis to apply beyond that distance. The matter of brick rates is also involved in the pending adjustment of commodity rates under the *Memphis-Southwestern Investigation*, 55 I. C. C., 515, dealing with various commodities, including brick. The rates on brick and related clay products from Mason City and other points in Iowa to points in Nebraska, North Dakota, South Dakota, Minnesota, and Wisconsin are in issue in No. 11672, *Mason City Brick & Tile Co. v. Director General*, and No. 12708, *Ballou Brick Co. v. A., T. & S. F. Ry. Co.*, now pending, which proceedings deal more specifically with the rates from and to those points. As complainants observe, the instant case presents certain issues, particularly with respect to the uniform brick list, not presented in the above cases.

For the reasons stated, the scales proposed by complainants for the western district can not be accepted, either as indicative of the present level of rates on brick in that territory as a whole, or as demonstrating that the present level of rates should be reduced and based upon the comparison with all freight statistics. On the evidence presented in this record it is impossible to deal effectively with the general rate situation as to brick in the western district, and that matter should be left for determination in harmony with whatever adjustment may result from the other proceedings referred to. Our finding in this case as to the western district will therefore be confined to the establishment of the uniform brick list.

Complainants ask that points in the vicinity of Mason City, Fort Dodge, and Des Moines, Iowa, respectively, be grouped on interstate traffic. The Refractories Traffic Association of the St. Louis district, intervener, asks, upon brief and argument, that fire-brick producing points in eastern Missouri in what is known as the St. Louis district, which points, broadly speaking, are now grouped by voluntary action of the carriers on long-haul traffic to large destination territories to the north, northwest, and southwest, be also grouped on traffic to the east. We have recognized the advantages to carriers and shippers of group adjustments resting on

conditions similar to those surrounding the manufacture and marketing of brick, and have frequently upheld them when nondiscriminatory. However, we are not prepared to require the establishment of the groups as requested without more detailed information than this record affords as to the effect of their establishment on competing producing points. In general, it may be stated that where there are a number of competing brick-producing points within a short radius, using the same deposit of clay or shale, they may properly be grouped on long-haul traffic.

JOINT RATES.

From brick-producing points in central territory the rates to the South are made in accordance with the long-recognized basis of combination on the Ohio River crossings. Complainants urge that joint through rates should be made applicable to such through traffic, and that in general joint through rates should be established on all through brick traffic. The present record, however, does not warrant a finding that this method of stating rates results in unreasonable rates to the South from central or trunk-line territories, or the condemnation of the principle of combination rates in general regardless of the measure of the through rates or of the circumstances which have led to the combination basis; nor does it afford any basis for removing the discrimination, if any, that may exist as the result of the maintenance of joint rates to the South from certain points in trunk-line territory.

COMMODITY RATES.

Some complaint is made of the lack of commodity rates between certain points in various sections of the country, and particularly in the South. In revising their rates in connection with the establishment of the uniform brick list the carriers should give consideration to the establishment of commodity rates where a movement of brick or tile is indicated. Brick is essentially traffic which normally moves at commodity rates.

COMMON BRICK.

For distances not in excess of 150 miles, rates on common brick, as defined in this report, when loaded at random to the marked capacity of the car without protection against chipping or breaking, will be unjust and unreasonable to the extent that they exceed 80 per cent of the contemporaneous rates on articles in the uniform brick list, which basis we find will be just and reasonable.

The southwestern interveners urge that the uniform brick list should not be prescribed for that territory in a proceeding in which we can not also at the same time fix the measure of the rates. Upon

argument the southern interveners also urge that hollow building tile should not be included in the uniform brick list. Apparently their objections are based principally upon the apprehension that the carriers if ordered to establish the uniform list will, in the absence of any finding as to the measure of the rates, attempt to meet that requirement by increasing the rates on the lower rated brick to the level of the higher rated brick or tile. We are of opinion that the objections raised should not be permitted to militate against the establishment of the uniform list and that from a classification standpoint there is no sound basis for the various distinctions in these territories between articles comprising that list. However, we shall expect the carriers in those territories in establishing the uniform brick list to observe as a guiding rule the preservation of existing revenues, based on the relative volume of movement of the various commodities between given points for a representative period. Where there is no movement of tile, for example, from a producing district, the carriers should not attempt as a part of this proceeding to increase the existing level of rates under the guise of establishing the uniform brick list, but such increases, if any, as are deemed justified in the measure of such rates should be made the subject of subsequent revision.

An appropriate order will be entered in No. 10733 requiring the establishment of the uniform brick list and of the base rates and short-haul scales herein found reasonable. Contemporaneously with the establishment thereof defendants will be expected to make effective upon not less than 15 days' notice, the other adjustments in accordance with our findings herein. Nothing in any outstanding unexpired orders of the commission should be construed as preventing the establishment of the uniform brick list as prescribed herein.

By schedules filed to become effective January 5, 1922, but which, upon protest of the Kane Brick & Tile Company, were suspended by orders entered in Investigation and Suspension Docket No. 1470, until June 5, 1922, the respondents in that proceeding propose to increase their interstate rates on brick, in carloads, from Kane, Pa., to New York and Philadelphia rate points on the Lehigh Valley Railroad. The rates from Kane, which is in the Brookville group, will be governed by the rates prescribed in No. 10733 from that group to New York and Philadelphia rate points.

The suspended schedules in Investigation and Suspension Docket No. 1454 and Investigation and Suspension Docket No. 1470 will be ordered canceled without prejudice to the right of respondents therein to establish rates in accordance with the conclusions herein.

INVESTIGATION AND SUSPENSION DOCKET No. 1445.
COAL FROM WYOMING MINES TO DESTINATIONS IN
UTAH, SOUTH OF OGDEN.

Submitted March 2, 1922. Decided April 1, 1922.

Respondent carriers propose reduced rates on coal from mines in the Rock Spring and Kemmerer districts in Wyoming to points in Utah south of Ogden, on the Oregon Short Line Railroad and its connections; *Held*, That the record establishes that they should not be allowed to become effective. Suspended schedules ordered canceled.

H. A. Scandrett, Dana T. Smith, and J. M. Souby for respondents.
De Vine, Howell, Stine & Gwilliam for Wyoming coal operators.
H. W. Prickett, W. S. McCarthy, M. H. Love, and Ray & Rawlings for protestants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

CAMPBELL, *Commissioner*:

By schedules filed to become effective December 5, 1921, suspended until April 4, 1922, and further suspended to May 4, 1922, respondents propose to reduce the rates on soft coal, in carloads, from mines in the Rock Springs and Kemmerer districts in Wyoming to points in Utah south of Ogden, on the line of the Oregon Short Line Railroad and its connections. Rates are stated herein in amounts per ton of 2,000 pounds and are those applying on lump and slack coal.

The present rates from the Wyoming mines to the destinations in question are \$2.625 on lump (including mine run and nut) and \$2.25 on slack. The rates proposed are \$2.10 and \$1.80, respectively. The purpose of the proposed reductions is to restore a previously existing equality in the rates to the destinations in Utah from the Wyoming mines and from the Castle Gate district of Utah. With the exception of a few unimportant interruptions, this equality was maintained throughout the history of the rates from these competing districts until it was destroyed by the refusal of the Public Utilities Commission of Utah to grant the increases on coal authorized in *Increased Rates, 1920*, 58 I. C. C., 220, which action was approved by us in *Utah Rates, Fares, and Charges*, 60 I. C. C., 388.

Protestants are operators of coal mines in the Utah fields. Their protest was stated to be "not because basically they objected to meet-

ing Wyoming on a competitive basis in the Utah field, but because they objected to meeting Wyoming on a competitive basis in the Utah field at the same time that they were denied an equal rate into the northwest."

To points in Idaho north and west of McCammon, where the distances favor the Wyoming mines, a differential is maintained in favor of the Wyoming mines and against Utah mines, which was prescribed by us in *Consolidated Fuel Co. v. A., T. & S. F. Ry. Co.*, 24 I. C. C., 213. The Utah operators are opposed, therefore, to an equality of rates from these two competing districts to the points in Utah where the distances are in favor of the Utah mines.

The position of respondents is that while to the destinations in Utah south of Ogden the Wyoming mines are at a disadvantage as compared with the Utah mines from the standpoint of distance, that this disadvantage is more apparent than real, since in other respects the operating conditions of the lines serving the Wyoming mines are more favorable than those on the lines serving the Utah mines, which offsets the mere difference in lengths of haul. They maintain that there is an absolute necessity for a parity in rates to the destinations involved to enable the Wyoming coal to compete with the Utah coal, and they contend, therefore, that even if from a strict transportation standpoint the rates from the Wyoming mines might properly be somewhat higher than those from the Utah mines, yet in restoring the parity of rates from these two highly competitive fields they are acting entirely within their rights under the law and in conformity with practices that prevail generally among railroads the country over in similar situations. They assert that while the proposed rates are somewhat lower than might be justified as reasonable from a strict transportation standpoint, that, nevertheless, they are as high as can be maintained under the circumstances, and, being unquestionably compensatory for the service involved, are fully justified. They say that if a differential in rates is maintained in favor of the Utah mines to the destinations involved, the effect will be to shut the Wyoming coal out of this market entirely.

The two coals sell for the same price at the mines and are retailed at the same price. While the Wyoming coal is perhaps the equal of the Utah coal in other respects, it is shown to be inferior in storage quality because of its softness and tendency to disintegrate upon exposure to the air and, therefore, the consequent excessive amount of slack incident to its handling makes it much more expensive to the dealers than the Utah coal. In dealing with this phase of the question, in *Consolidated Fuel Co. v. A., T. & S. F. Ry Co.*, *supra*, we said:

One of the strongest competitors at points to the westward is the Wyoming coal field, known as the Rock Springs and Kemmerer districts, located on the 68 I. C. C.

Union Pacific and the Oregon Short Line, respectively. This coal is inferior to the Utah coal in that it slacks more quickly and is not a good storage coal. Nevertheless it is strong in demand.

The witnesses introduced by the Wyoming coal interests, who support respondents, represented for the most part consumers of coal in the destination territory involved. They testified, among other things, that the proposed reductions are in the interest of the consumers, because it is desirable to have competition in the sale of the commodity, and also because there are times when it is difficult to secure coal from the Utah fields because of interruptions of traffic on the lines serving those mines due to excessive snows, shortage of equipment, and other conditions bringing about undue congestion.

Coal from both the Rock Springs and Kemmerer districts moves to the destinations involved through Granger, Wyo., which is approximately midway between the two fields, being 45 miles west of Rock Springs and 40 miles east of Kennerer. The distance from Rock Springs may be taken in each instance as fairly representing the average haul from the Wyoming mines. This distance to Ogden is 191 miles, and to Salt Lake City 228 miles. From the Castle Gate district the average distance to Ogden is approximately 160 miles, and to Salt Lake City 124 miles. To points on the Western Pacific the difference in distances from the two competing groups is represented by the difference at Salt Lake City, which is about 104 miles in favor of the Utah mines. The same applies also to destinations on other connections of the Oregon Short Line at Salt Lake City except the Los Angeles & Salt Lake Railroad. To points on that line the difference against Wyoming mines is somewhat greater, since the coal from the Utah mines comes to it at Provo, Utah. Salt Lake City is shown to be by far the most important single destination involved because of the relatively large consumption of coal used there by the smelters and other large industries located in that vicinity.

The parity of rates which respondents now seek to reestablish has always applied in the past not only at destinations involved in this proceeding, but at practically all important points in Utah, including Oregon Short Line and Southern Pacific points north and west of Ogden. Respondents contend that a fair comparison of distances should take into consideration all of these Utah destinations to which the same rates have heretofore been maintained from both districts. They show a comparison of the average distances to all points on the Oregon Short Line in Utah where a parity of rates was maintained prior to August 26, 1920, from both of the competing mining districts. These averages are based on the actual movement of coal from the two districts during the period of Janu-

ary 1, 1920, to November 30, 1921, representing one year and 11 months. The average from the Wyoming mines is shown to be 230 miles, as against an average of 181 miles from the Utah mines located on the Denver & Rio Grande Western Railroad and 206 miles from those located on the Utah Railway. The average from all Utah mines is 188 miles, and on this basis the difference in the average distances is about 42 miles in favor of the Utah mines.

The haul from the Wyoming mines is for the most part a main-line haul over one of the most favorable portions of the Union Pacific system. The movement from the Utah mines located on the Utah Railway represents in all cases a two-line haul, making a comparatively short haul enjoyed by each of the participating lines. The movement from the Denver & Rio Grande Western mines involves generally a combined branch-line and main-line haul over some of the most difficult portions of that road. These unfavorable operating conditions involving the haul from Utah mines were commented upon by us in *Consolidated Fuel Co. v. A., T. & S. F. Ry. Co., supra*.

The record shows that the first rates into the Utah destinations from the Wyoming mines were published in 1897 and were \$2 per ton on lump and \$1.75 on slack. Six or seven years after this date the first coal was mined in Utah. These mines were served exclusively by the Denver & Rio Grande Western and this carrier met to these destinations the then existing rates applying from the Wyoming mines. From that time on, with few exceptions, the rates from the two districts have been maintained on a parity, the Utah district having been expanded to include mines later opened on the Utah Railway. One exception to this equality was brought about between November 30, 1914, and May 13, 1915, when the rates of \$1.75 on lump and \$1.50 on slack, which had been in effect from both districts for several years, were reduced from the Utah mines to \$1.60 and \$1.35, respectively. On the last-named date, however, this reduction was made from the Wyoming mines, and again on August 1, 1917, an increase of 15 cents per ton was made in the rates on both grades from Wyoming under our authority in *The Fifteen Per Cent case*, 45 I. C. C., 303. A corresponding increase was not permitted by the Utah commission in the rates from Utah mines, so that this disparity continued from that date until June 25, 1918, when under General Order No. 28 of the director general the rates from both districts were increased to \$2.10 on lump and \$1.80 on slack.

On August 26, 1920, the rates from Wyoming mines were increased to \$2.625 on lump and \$2.25 on slack under our order in *Increased Rates, 1920, supra*, whereupon the carriers made application to the Utah commission for permission to make corresponding increases

in the rates from Utah mines, which application was denied. They then undertook to accomplish the same result through proceedings before us, but were not successful. *Utah Rates, Fares, and Charges, supra.* After some delay the lines serving the Wyoming mines decided to make reductions in their rates from the Wyoming mines sufficient to restore the former parity existing between those rates and the rates from Utah mines to all Utah destinations.

The rate proposed of \$2.10 on lump is but 10 cents higher than the first rate which was established from these Wyoming mines when there was no competition in Utah. It is 35 cents higher than the rate of \$1.75 which has applied from both fields during the greater part of their history. It is 50 cents higher than the rate of \$1.60 which respondents published in 1915 to meet a similar one established from the Utah mines. It is the rate resulting from the readjustments which were made under General Order No. 28 of the director general. The proposed reduction merely represents a surrender by respondents under the force of competitive conditions of the increase authorized in *Increased Rates, 1920, supra.*

Respondents offered evidence to show that since the differential against the Wyoming mines went into effect August 26, 1920, there has been a substantial falling off in the coal shipped to these Utah destinations, which they maintain is due solely to the differential in rates which has resulted in the displacement of the Wyoming coal in the Utah market.

Protestants maintain that to allow respondents to equalize the rates from the Wyoming mines to the Utah destinations with those from the Utah mines would be discriminatory against the Utah mines, and cite numerous decisions in which we have held that it is not our function to equalize commercial conditions or neutralize geographical or commercial disadvantages of individuals or localities by the adjustment of transportation charges, as a reason why in this case we should not sanction the proposed equalization of rates. However, the question here presented is not how far we may properly go in requiring respondents to equalize their rates from the Wyoming mines with those applying from the Utah mines to the destinations involved, but rather, how far the respondents themselves may lawfully go in this direction. This, respondents say, presents the question whether the rates proposed are too low to be compensatory so that their application to such coal traffic as might move under them would operate unduly to burden other traffic. They contend that the rates are compensatory. The ton-mile earnings for the haul from Castle Gate group to Salt Lake City, for example, the rates for which have been held by us to be reasonably high in *Utah Rates, Fares, and Charges, supra*, are 17 mills, while from the Rock Springs group, under the proposed rate they are 9 mills. Again, at Modena, a point

with one of the greatest differences in distance, the ton-mile earnings are, from Castle Gate group, approximately 14 mills and from Rock Springs group approximately 9 mills.

In our recent decision in *Nevada Public Service Commission v. A., T. & S. F. Ry. Co.*, 66 I. C. C., 216, decided February 7, 1922, subsequent to the hearing in the instant case, we prescribed the same rates on coal from the Utah and Rock Springs mines to points on the Southern Pacific and Western Pacific in Nevada. The differences in distances there via the shortest routes were generally from 40 to 50 miles in favor of the Utah mines. To Nevada points on the Los Angeles & Salt Lake, however, where the difference in distances was materially against the Wyoming mines, we declined to prescribe the same rates as from the Utah mines, but said:

We see no objection to the voluntary equalization of rates from Castle Gate and Rock Springs to all points in Nevada, but we can not prescribe the same rates from Rock Springs that would be reasonable from Castle Gate to points on the Los Angeles & Salt Lake, because of the much greater difference in distance from the two districts to points on that line than to points on other lines in Nevada.

Under this decision the same rates may be applied from both districts to all points on the Southern Pacific and Western Pacific in Nevada, whereas immediately across the State line in Utah the rates from the Wyoming mines to points on the Western Pacific are at present materially higher than those from Utah mines. It should be noted, however, that we were there dealing with generally longer hauls than here.

The present question of rate relationship was before the whole commission in *Utah Rates, Fares, and Charges, supra*, and decided adversely to the Wyoming operators. No good reason appears for taking different action here. If we should permit a reduction from the Wyoming mines, the Utah commission or the Utah carriers might reduce the rates from the Utah mines, referring to our decision in the case just cited, practically fixing a differential as warrant for their action. Thus there might result that destructive competition which is so out of consonance with the fundamentals of the interstate commerce act, and entailing a conflict of authority between us and the Utah commission, which should have no place in modern rate regulation.

The record establishes that the proposed reductions should not be allowed to become effective. An order will be entered requiring the cancellation of the schedules under suspension.

This finding is without prejudice to the conclusions which may be reached in any other proceeding dealing more comprehensively with the general question of coal rates in this territory.

No. 12645.

CERTAIN-TEED PRODUCTS CORPORATION

v.

**CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.**

Submitted February 17, 1922. Decided March 28, 1922.

1. Collection of charges by Chicago, Ottawa & Peoria Railway from complainant for the latter's use of a portion of its track at Marseilles, Ill., as a private switch track, not found unlawful.
2. Commission without jurisdiction to consider the reasonableness of such a charge. Complaint dismissed.

R. W. Ropiequet and W. C. Ropiequet for complainant.

A. B. Enoch for Chicago, Rock Island & Pacific Railway Company.

James A. Knowlton for Chicago, Ottawa & Peoria Railway Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MEYER, CAMPBELL, AND COX.

Cox, Commissioner:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued.

Complainant, a corporation manufacturing roofing products at Marseilles, Ill., alleges that the assessment by the Chicago, Ottawa & Peoria of a trackage charge of \$1 per car in excess of the published rates applicable on traffic from and to its plant at Marseilles is unlawful, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked for an order requiring that defendants cease and desist from assessing this charge and for an award of reparation.

The city of Marseilles is served by the Chicago, Rock Island & Pacific and the Chicago, Ottawa & Peoria, hereinafter, respectively, referred to as the Rock Island and the Peoria. Besides its main-line tracks at Marseilles, the Peoria owns a branch-line track which extends from a connection with the Rock Island to complainant's plant and to the plants of two other industries adjacent thereto. The distance from complainant's plant to the tracks of the Rock Island is about 2,000 feet. This spur track was built in 1906 by the Rock

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Island for the Marseilles Land & Water Power Company. Evidence was offered for the purpose of showing that, in the original contract covering the construction of the track, the Rock Island agreed to "pay or cause to be paid" the sum of \$1 per car to the owners of the track if it should use it for the purpose of transporting thereon the business of certain industries. The contract itself is not properly in evidence, and the testimony regarding it is vague and conflicting. In 1908, an agreement was entered into between the Manufacturers Terminal Railway Company, the then owner of the track, and the General Felt & Paper Company, predecessors of complainant, wherein it was provided that the General Felt & Paper Company, or its assigns, would pay to the Manufacturers Terminal Railway Company, or its assigns, for the use of the said track, the sum of \$1 for every loaded car moved to or from its plant. Title to the track was conveyed to the Peoria in 1910. Complainant succeeded the General Felt & Paper Company and has been and still is paying this charge of \$1 as agreed by its predecessor. The two other industries reached by this track pay a similar charge. No part of the \$1 charge paid the Peoria has been or is received by the Rock Island.

The Peoria is an electric common carrier subject to the act, which files tariffs with us and participates in joint rates on interstate traffic with carriers other than the Rock Island. No traffic is interchanged under joint rates with the Rock Island at Marseilles. There is an interchange track near complainant's property which connects the main line of the Peoria with the spur track in question, but this appears never to have been used for the interchange of through traffic moved in connection with the Rock Island except that at present the Peoria maintains a switching rate of \$6.50 per car for moving certain building materials from this interchange track to a point about 3.5 miles from Marseilles, where a public work is being constructed. The Rock Island moves this traffic to the interchange and absorbs \$4 of the charge assessed by the Peoria. This is said to be a temporary arrangement. On that portion of its track which lies between complainant's property and the right of way of the Rock Island the Peoria performs no movement of traffic, nor does it provide motive power for common carriage. The Rock Island provides the motive power for moving traffic from and to industries on this track. In its tariffs the Rock Island shows complainant's plant as a destination on its own line, and there is no provision that any extra switching charge will be assessed for movement from and to the same. There is no provision in any tariff for the assessing of this \$1 charge.

Complainant contends that the assessment thereof is unlawful under section 6. It further contends that it is the duty of the Rock Island to furnish this track as a facility used by it in transporting

traffic to and from complainant's plant under through rates; that such through rates of the Rock Island, which include service to and from the plant, must be presumed to be adequately compensatory for all services performed; and that the additional charge paid by complainant renders the total charges unreasonable to the extent of \$1 per loaded car.

Section 6 of the act provides that carriers shall file their tariffs with us showing their rates, fares, and charges for the transportation of freight or passengers, which tariffs also must show all privileges or facilities granted or allowed. The same section further provides that carriers shall not engage or participate in the transportation of passengers or property unless they file such tariffs, and they are likewise forbidden to extend to any shipper or person any privileges or facilities except such as are specified in their tariffs. It is clear from a reading of this entire section that it is intended to apply only to services, facilities, and privileges granted in connection with the actual handling or movement of freight or the transportation of, and the rendering of specified services to, passengers.

The previous owner of this track did not move any traffic over it, and the relationship that existed between it and the predecessor of complainant was not that of shipper and common carrier. The situation was simply one wherein an owner of a track granted the use thereof to various industries as a means of connecting with the trunk line, and exacted compensation therefor. The evidence does not indicate that the Peoria's acquisition of the track resulted in any change in the relationship that previously existed between track owner and shipper. The Peoria merely continued as the naked holder of the title to the track, performing no common-carrier service in connection therewith. The fact that the Peoria is a common-carrier corporation subject to the act generally does not operate as a bar to its engaging in lawful business activities other than common carriage. Charges in connection with such activities are not a proper subject of tariff publication. In this connection it should be noted that the Peoria attempted to file a tariff effective April 21, 1921, wherein it provided a charge of \$2, to be assessed by it on all loaded cars handled at Marseilles by the Rock Island over the Peoria's tracks. This tariff was rejected by us on the ground that it sought to make a charge for services performed by another carrier. The fact that payment is made per car perhaps makes it savor somewhat of a transportation charge. But this is simply a convenient method of measuring the amount to be paid by complainant for the use of the track. The nature of the transaction is the same as if the amount were fixed at a certain sum per annum.

The contention that the track in question is a facility of the Rock Island which it is the duty of that carrier to furnish, is equally untenable. There is no duty on the part of a common carrier subject to the act to provide tracks off its lands to effect connection with an industry. If an industry desires connection with a trunk line, the duty devolves upon it to make arrangements for the procuring of a spur. Paragraph 9 of section 1 makes it the duty of a common carrier under stated circumstances to construct, maintain, and operate, upon reasonable terms, switch connections with private sidetracks which may be constructed to connect with its rails by shippers tendering interstate commerce. But this duty does not arise until the shipper has provided the sidetrack. *Ralston Townsite Co. v. M. P. Ry. Co.*, 22 I. C. C., 354. In the instant case complainant's predecessor and concerns similarly located, instead of constructing their own switch tracks up to the Rock Island right of way, elected to enter into an agreement with a third party for the privilege of being served by a then existing track, to which arrangement complainant has succeeded. It is true, as previously indicated, that the Rock Island has moved certain building materials over this track to the interchange with the Peoria destined to a consignee at a point beyond Marseilles. This is a temporary arrangement, the details of which are not clearly shown. It can not be said to change in any way the character of this track with relation to complainant. The amount of consideration that complainant pays for the use of this track is a matter of private contract.

Complainant's allegations of undue prejudice and unjust discrimination are founded upon the fact that industries at other points receive and ship their traffic at the flat rates applicable from and to the particular point, and are not required to pay the additional trackage charge; but there is no evidence to show that industries located at such points operate under trackage arrangements similar to those existing between complainant and the Peoria.

We find that the collection of the charge assailed does not constitute a violation of the interstate commerce act, and that we are without jurisdiction to determine the reasonableness of this charge. The complaint will be dismissed.

No. 11385.

GEORGE C. HOLT ET AL., RECEIVERS OF AETNA
EXPLOSIVES COMPANY, INCORPORATED,

v.

WEST SHORE RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted July 18, 1921. Decided March 18, 1922.

Double first-class rate on blasting caps and electric blasting caps, in carloads, from Port Ewen, N. Y., to North Birmingham, Ala., found not unreasonable. Refund of overcharges directed. Complaint dismissed.

Max L. Schallek, Samuel Randel and Strasbourger & Schallek for complainants.

John F. Finerty, H. L. Walker, and Fred H. Behring for various defendants.

John N. Steadwell for southern classification committee lines.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

George C. Holt and Benjamin B. Odell, as receivers of the Aetna Explosives Company, Incorporated, by complaint filed April 10, 1920, allege in substance that the charges assessed on two carloads of blasting caps and electric blasting caps shipped December 28, 1917, and March 16, 1918, respectively, from Port Ewen, N. Y., to North Birmingham, Ala., were unjust and unreasonable; and that the rates charged on electric batteries and connecting and leading wire accompanying one of the shipments were in excess of those legally applicable. The prayer is for reparation only. After hearing and upon petition of complainants this proceeding was reopened for further hearing, which has been had. Rates will be stated in amounts per 100 pounds. Blasting caps and electric blasting caps will be referred to collectively as caps except as otherwise stated.

The ordinary blasting cap is a cylindrical copper tube, from 1 to 3 inches in length, containing from 5 to 50 grains of dry fulminate of mercury, or its equivalent, and is fired by means of a slow-burning

safety fuse. The electric blasting cap contains a small "bridge" of fine wire through which an electric current is passed to fire the charge. Both are used to detonate high explosives, are more sensitive to heat than dynamite, and are extremely sensitive to shock—more so than either dynamite or trinitrotoluol. The ordinary cap is shipped without the fuse attached; the electric cap with wire attached.

The regulations prescribed by us for shipping explosives by freight place fulminates in a class distinct from high explosives. These regulations prohibit transportation of fulminate of mercury in a dry condition except when contained in caps and certain other manufactured articles. There are special rules for packing and marking caps for shipment, and the placing of caps in the same car with high explosives is prohibited.

The first shipment weighed 20,283 pounds, and contained 17,477 pounds of caps, 876 pounds of batteries, and 1,930 pounds of wire. The second consisted of caps and weighed 21,575 pounds. Freight charges amounting to \$645.01 and \$860.85, respectively, were collected, the basis for which is not clear. The joint rates applicable, governed by the southern classification, were: On the caps, a double first-class any-quantity rate of \$2.66; on the batteries, a first-class any-quantity rate of \$1.33; and on the wire a second-class less-than-carload rate of \$1.14. The correct charges on the first shipment were \$498.54, and on the second \$573.90. The overcharges were \$146.47 and \$286.95, respectively.

There was contemporaneously applicable from and to these points on shipments of dynamite and other high explosives a joint first-class rate of \$1.33, governed by the southern classification. Complainants contend that the rate on caps should not have been higher, and refer to *Aetna Explosives Co. v. C. & E. I. R. R. Co.*, 52 I. C. C., 26, and the cases cited therein; which hold that the first-class rates in carloads, and double first-class rates in less than carloads, are the maximum reasonable rates on high explosives.

Caps were not specifically rated in southern classification until August 26, 1907, when there was added an any-quantity rating of double first class, the same as applied on less-than-carload quantities of high explosives and black powder. The same rating on caps was contemporaneously carried in western classification. In official territory caps and other explosives are subject to the tariffs of the individual lines. No application for a carload rating on caps was ever made to the southern carriers, but upon application filed with the western lines in February, 1919, the western classification was amended on May 15, 1919, and the southern classification on June 10, 1919, by providing a carload rating of first class and a less-than-carload rating of double first class.

Caps do not move in carload quantities to any great extent. From December, 1917, to February, 1921, a period of over three years, 59 carloads of caps were shipped from Port Ewen to various destinations. Seven of these shipments, including the two on which the rates are assailed, moved to North Birmingham, this being the extent of the movement from Port Ewen into southern classification territory. The market value of caps was shown to have been about \$1.50 per pound when the shipments moved, while that of dynamite varied from 17.4 cents to 22.5 cents per pound, and other high explosives and materials used in their manufacture from 1.6 cents to 70 cents per pound. Caps are not as heavy as high explosives. Of the 59 shipments referred to, 22 weighed more than the minimum weight of 20,000 pounds, the heaviest being 33,276 pounds.

We find that the rate applicable on blasting caps and electric blasting caps was not unreasonable. The overcharges, with interest, should be promptly refunded. An order will be entered dismissing the complaint.

CAMPBELL, *Commissioner*, dissenting:

I do not think a higher rate on blasting caps than the rate upon dynamite can be justified. Dynamite takes first class. Blasting caps should be given the same rating.

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No. 11663.

CHITTENDEN & EASTMAN COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATLANTIC & YADKIN
RAILWAY COMPANY, ET AL.

Submitted May 12, 1921. Decided March 18, 1922.

Rates on furniture, in carloads, from North Carolina and Virginia points to Burlington, Iowa, found not unreasonable or unjustly discriminatory, but unduly prejudicial and in violation of section 4. Reparation denied. Undue prejudice ordered removed.

Leo E. Golden and Clarence S. Bather for complainant.

W. N. McGehee, Charles J. Rixey, jr., Fred H. Behring, M. H. MacQuown, and G. A. Hoffelder for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. Our conclusions differ in some respects from those recommended by him.

Complainant, a corporation engaged in the furniture business at Burlington, Iowa, by complaint filed July 19, 1920, as amended, alleges that the rates on furniture in carloads from points in North Carolina and Virginia to Burlington are unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul provision of section 4 of the interstate commerce act. We are asked to prescribe rates for the future and to award reparation. Rates will be stated in amounts per 100 pounds.

Complainant makes no point of its allegation of unreasonableness and only seeks an equitable and fair relationship of rates with its competitors.

Prior to June 25, 1918, the rate on furniture of certain descriptions from about 87 producing points in North Carolina and Virginia to Burlington was 74.8 cents. On that date it was increased to 93.5 cents pursuant to General Order No. 28 of the Director General of Railroads. On August 26, 1920, it was increased to \$1.255. The present rate is a combination of commodity rates of \$1.075, mini-

mum 12,000 pounds to Chicago, Ill., and 18 cents, minimum 20,000 pounds, beyond. The factor from Chicago to Burlington on a general mixture of furniture would be 54.5 cents, making a combination of \$1.62.

Complainant receives regularly a substantial number of carload shipments of furniture from Mount Airy, Drexel, Winston-Salem, High Point, and Sheffield, N. C., and Bassett, Va. The record leaves in doubt whether complainant's shipments move through Chicago, Peoria, or St. Louis. After arrival at Burlington other kinds of furniture, such as upholstered pieces and mattresses, are added and the cars are reshipped to points in Iowa, especially to points west of the Missouri River in Kansas, Colorado, and Nebraska. Complainant competes with other jobbers located at Chicago; Des Moines, Iowa; Omaha, Nebr.; Sioux City, Iowa; St. Joseph, Mo.; and Kansas City, Mo. It also competes with certain North Carolina manufacturers who sell direct to local dealers at points in Iowa such as Ottumwa and Oskaloosa. Burlington is directly intermediate to the latter points over the Chicago, Burlington & Quincy. From Winston-Salem, N. C., a representative point, there is a joint rate to Des Moines of \$1.305, applicable both to less-than-carload and carload shipments, minimum 12,000 pounds, and a combination rate of \$1.34 to all of the competitive points on the Missouri River, composed of a joint proportional rate of 96 cents, minimum 12,000 pounds, to all east-bank Mississippi River crossings, and local or joint rates of 38 cents, minimum 20,000 pounds, beyond. Prior to June 25, 1918, proportional rates were in effect to Missouri River cities from east-bank Mississippi River crossings, but since that date the proportionals have been applied only from the west-bank crossings to Missouri River cities.

The proportional rate to east-bank crossings applies in combination with local rates to points west of the Mississippi such as Middletown, about 15 miles west of Burlington, but not to points on the west bank such as Burlington. The present through rate to Middletown is \$1.195, composed of the proportional rate of 96 cents to East Burlington and 23.5 cents, minimum 12,000 pounds, beyond. Burlington is directly intermediate to Middletown over the Chicago, Burlington & Quincy. This departure from the long-and-short-haul provision of section 4 is not protected. Other violations of that provision are caused by reason of the higher minimum of 20,000 pounds under the rate from Chicago to Burlington. For example, the charges per car of 12,000 pounds under the rate of \$1.32, minimum 12,000 pounds, to Ottumwa would be \$158.40, and to Burlington, under the combination rate of \$1.075, minimum 12,000 pounds, to Chicago and 18 cents, minimum 20,000 pounds, beyond, \$165. Such violations should be promptly corrected.

The charges per car of 12,000 pounds under the joint rate of \$1.305 to Des Moines would be \$156.60 and thus less than on a like shipment under the combination rate to Burlington. Defendants state that the traffic to Des Moines is handled through St. Louis and lines beyond by which Burlington is not intermediate. They further state that the rate to Des Moines is the only instance of a joint rate to a point in Iowa, and that it is their purpose to withdraw it. If the joint rate were canceled the combination rate would be \$1.425, composed of the proportional rate of 96 cents to east-bank Mississippi River crossings, plus the local third-class rate of 46.5 cents beyond, or 17 cents higher than the rate to Burlington. As above indicated, the present spread of Des Moines over Burlington is 5 cents for the additional haul of about 202 miles, the distances from Winston-Salem, as shown in complainant's exhibits, being 1,024.8 miles to Burlington and 1,226.8 miles to Des Moines. The combination of \$1.425 would be higher than the present rate of \$1.34 to Omaha. The present spread of Des Moines over Burlington is too low, but defendants would not be warranted in establishing a rate to Des Moines higher than, or as high as, the rate to Omaha. Defendants do not admit that the present relationship is unduly prejudicial to Burlington and unduly preferential of Des Moines.

The distance to Omaha, a representative Missouri River city, is 1,300.3 miles from Winston-Salem, as shown in complainant's exhibit, or 275.5 miles and about 27 per cent farther distant than Burlington. The rate to Omaha is \$1.34 or 8.5 cents and about 6.7 per cent higher than the rate to Burlington. The present spread in the rates to Missouri River cities over Burlington does not give Burlington the advantage of her geographical location. The car-mile earnings under the rate from Winston-Salem to Burlington, using the 12,000-pound minimum for the factor to Chicago and 20,000 pounds for the factor from Chicago, are 16.6 cents. Under the rate to Omaha, using the 12,000-pound minimum for the proportional rate to the river and 20,000 pounds beyond, the car-mile earnings are 14.7 cents. The earnings under these rates are not unreasonably high.

Complainant shows that it is at a serious disadvantage in the sale of its products, particularly at points west of the Missouri River, because it must absorb amounts ranging from \$29.16 to \$49.80 per car, the equivalent of about 25 cents per 100 pounds additional freight charges on cars reshipped to local dealers west of the Missouri River. It must absorb this difference in order to meet the competition of shippers located at the Missouri River cities, and this difference, complainant's witness testifies, is due entirely to the relative adjustment of the inbound rates to Burlington, as compared with the rates to the Missouri River cities, and not to the outbound or reshipping rates to points west of the Missouri River.

Complainant contends that the proportional rate of 96 cents to east-bank Mississippi River crossings should be made to apply to the west bank also and that the local rate to Burlington should be made the same as this proportional rate. In answer to this, defendants show that the proportional rate to East St. Louis, Ill., for example, does not apply to St. Louis, Mo., and that the rate from Winston-Salem to St. Louis is slightly higher than the rate to Burlington. The question of a reinstatement of the application of the proportional rates to west-bank crossings is not in issue in this proceeding and nothing herein should be construed as sanctioning or condemning the present application of the proportional rates.

Complainant contends that the rate to Burlington should not exceed the rate to Chicago, and states that the high terminal expenses at Chicago offset the additional distance to Burlington. This contention is not sustained upon the present record.

Defendants state that the minimum of 12,000 pounds under the rate to Des Moines was erroneously established. No justification appears for different minima in connection with the factor from Chicago to Burlington and the joint rate to Des Moines. This disparity contributes to the disadvantage under which Burlington is placed, and the minima under the rates to both points, as well as the Missouri River cities, should be the same. This record would not justify a finding as to what would be a reasonable minimum in connection with the rates to these points.

We find that the rates assailed were not and are not unreasonable or unjustly discriminatory, but that they are, and for the future will be, unduly prejudicial to Burlington and unduly preferential of Des Moines and the Missouri River cities to the extent that the rates to Burlington exceed 15 cents less than the rates contemporaneously maintained to Des Moines and 18.5 cents less than the rates contemporaneously maintained to Omaha and other points taking Missouri River cities' rates.

Damages have not been proven with sufficient particularity to warrant an award of reparation. An appropriate order will be entered.

CAMPBELL, *Commissioner*, dissenting in part:

The departures from the long-and-short-haul provision of section 4 are not protected by appropriate application to this commission for permission to violate the fourth section. Following my dissent in *Anaconda Copper Mining Co. v. Director General*, 64 I. C. C., 136, 139, I can not concur in the finding which denies reparation. The rates charged to the intermediate points are illegal and refund should be required of the unlawful charges collected.

No. 11651.
UNITED VERDE EXTENSION MINING COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted April 7, 1921. Decided March 18, 1922.

Defendant's failure to accord switching service on intrastate shipments of ore at Clarkdale, Ariz., found not in violation of the interstate commerce act or the Federal control act. Complaint dismissed.

E. H. B. Avery for complainant.

E. W. Camp and *G. H. Baker* for director general.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By Division 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation mining and smelting copper ore at Jerome and Verde, Ariz., alleges that the switching charge of \$2.50 per car collected on 273 carloads of ore shipped intrastate between April 30 and June 23, 1919, from its mine near Clarkdale, Ariz., to its smelter at Verde, were unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of section 10 of the Federal control act, in that "the defendant performed no service whatsoever in the movement of the cars concerned." We are asked to award reparation.

The mines of complainant are on the Verde Tunnel & Smelter Railroad, hereinafter called the Verde Tunnel, which extends from Clarkdale to Jerome, about 10 miles. The smelter is at Verde, about 4 miles south of Clarkdale, on the Arizona Extension Railroad, an industrial line owned by complainant, which, according to complainant's witness, "is not operating as a common carrier." Neither of these roads was under Federal control during the period here considered. Prior to February 28, 1919, traffic between the mine and the smelter was handled by the Verde Tunnel to transfer tracks at Clarkdale, moved thence by defendant's power over the Atchison, Topeka & Santa Fe tracks approximately 1.75 miles, and turned over to the Arizona Extension for delivery at the smelter. Defendant, until February 28, 1919, maintained a switch engine at Clarkdale for the performance of this switching service, and under the pub-

lished tariffs assessed therefor a switching charge of \$2.50 per car. Complainant's mines and smelters ceased operation because of a strike, and defendant removed the switch engine from Clarkdale on that date and did not return it until June 23, 1919. In the meantime complainant had resumed operations, and on or about April 30 shipments began to move from the mines to the smelter. Until June 23 the switching service theretofore performed by defendant was done by complainant's employees with a locomotive belonging to complainant. Under a standing billing arrangement between the Verde Tunnel and defendant, the former issued the waybills and the latter the freight bills. Charges of \$2.50 per car were collected from complainant as though defendant had in fact performed the switching service. Complainant asks for reparation in this amount, but is willing to pay defendant 50 cents a car for the use of the Santa Fe tracks. Its basis for this charge is that the distance is less than 2 miles and that 25 cents per car-mile would be adequate revenue for the use of the tracks.

In the absence of the switch engine, defendant's road engine and crew, which serve the branch reaching Clarkdale, made frequent if not daily trips to Clarkdale. The road crew performed some switching at Clarkdale, but apparently did not have sufficient time to perform the switching required on complainant's shipments.

The testimony is uncontroverted that complainant made request of defendant's local agent for performance of the switching service; that the agent informed complainant that the road crew and engine could not do the switching on account of lack of time, and requested the superintendent of the Arizona Extension to send locomotives on defendant's tracks and perform the service; and that the Arizona Extension switched the cars in pursuance of this request. In support of its allegations complainant relies upon the fact that it has been required to pay for a service which was not rendered, but which it was required to perform itself, a requirement not imposed upon other shippers at that or other points.

It is apparent that the Arizona Extension acted as an agency of defendant, at his request, in performing the switching services. If complainant had not owned the Arizona Extension the situation would present no difficulty. The complainant would clearly be under obligation to pay to defendant his published switching charges, no more and no less, and defendant would have to pay the Arizona Extension what the switching was worth, whether more or less than defendant's published charge. If either failed to pay, the recourse would be to the courts, not to us. That situation is not materially changed by the fact that complainant owned and operated the Arizona Extension. As shipper, complainant had to pay the pub-

lished charges. As agent, it is entitled to compensation from defendant for what its services under that employment were worth, and may sue for it in a court of competent jurisdiction.

Following *Rutherford-Brede Co. v. Director General*, 61 I. C. C., 515, we find that defendant's failure to accord switching service on these shipments, or to reimburse complainants for furnishing said service, was not in violation of the interstate commerce act or of the Federal control act. The complaint will be dismissed.

68 I. C. C.

No. 11940.

GREAT LAKES DREDGE & DOCK COMPANY

v.

**DIRECTOR GENERAL, AS AGENT, ILLINOIS CENTRAL
RAILROAD COMPANY, ET AL.**

Submitted September 26, 1921. Decided March 25, 1922.

Rates and switching charge on riprap stone, in carloads, from the Bedford (Ind.) district to Chicago, Ill., found not unreasonable or otherwise unlawful. Complaint dismissed.

A. L. Gettys for complainant.

William F. Peter, C. C. Hine, and E. A. Smith for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, engaged in general marine construction, by complaint filed November 6, 1921, alleges that the rate of \$1.50 charged by the Chicago, Indianapolis & Louisville, and the Chicago, Terre Haute & Southeastern, hereinafter called the Monon and the Terre Haute, respectively, on riprap stone, in carloads, which moved over their respective lines from the Bedford (Ind.) district to Chicago, Ill., during the period from September 23, 1918, to March 1, 1920, was unreasonable to the extent that it exceeded \$1.20, the contemporaneous rate of the Illinois Central from the same general district to Chicago. It further alleges that the assessment of an additional charge of 50 cents by the Illinois Central for switching these shipments to its pier track No. 1, at the foot of South Water Street in Chicago, was unreasonable. We are asked to award reparation; to establish the lower basis of rates for the future, and to eliminate the switching charge. Rates and charges are stated in amounts per net ton, the unit of weight used in this report.

Riprap stone, a waste product of stone quarries, is used by complainant in breakwater construction along the lake front at Chicago. The stones weigh from 5 to 15 tons each and are transported in coal cars or on flat cars, preferably in coal cars, because of less trouble with shifting of the load.

The Terre Haute, on October 6, 1915, and the Monon, on October 7, 1915, established a 90-cent commodity rate on riprap stone from points in the Bedford district to Indiana Harbor, Ind., within the Chicago switching district, where a similar breakwater project was under way. Effective April 1, 1917, after completion of the work they canceled this rate, believing it too low, and restored the former commodity rate of \$1.16. On May 14, 1917, the Illinois Central published a 90-cent commodity rate from Bloomington, Ind., near Bedford, to Chicago. Comparatively few shipments moved over the Illinois Central, which states that it was largely through inadvertence that its former rate of \$1.16 was not also restored. These rates were increased under the general increases authorized from time to time, and on June 25, 1918, became \$1.50 over the Monon and the Terre Haute and \$1.20 over the Illinois Central, the rates in effect when the shipments moved. The rate is now \$2.10 over all three lines.

Complainant contends that the rate over the Monon and the Terre Haute for distances ranging from 245 to 262 miles should not be higher than that over the Illinois Central for a distance of approximately 309 miles. It compares the rate of the Monon and the Terre Haute with rates on crushed stone from Kankakee and Lehigh, Ill., to points in southern Illinois, and between points in Wisconsin, and with rates on bituminous coal from Indiana points to Chicago. Defendants criticize these comparisons on the ground that the Illinois stone rates cover transportation southbound from the points named, in the direction of the empty coal-car movement, the reverse of the fact here, and contend that rates on coal lower than those on riprap stone, are justified by the much greater tonnage of coal. They offer comparisons between the rates attacked and rates on coal, cement, common brick, common or fire clay or shale, crushed stone, and wooden piling from Indiana and Ohio points to Chicago.

A witness for defendants testified that the 90-cent rate established by the Monon and the Terre Haute was a low rate made to obtain traffic for equipment which otherwise would have been idle.

Defendants also state that greater service is required in gathering shipments of riprap stone, a car or two at a time, from scattered refuse heaps than in loading building stone from collection points, in cuts of cars, and that there is greater service and hazard in transporting riprap stone than building stone on flat cars. The rates of the Monon and the Terre Haute on riprap stone from Bedford to Chicago are, and for a number of years have been, approximately 50 per cent of the rates on commercial building stone. In *Heldmaier v. C., I. & L. Ry. Co.*, 49 I. C. C., 81, commodity rates on rough

building stone from the Bedford district to Chicago, higher than the contemporaneous sixth-class rates that would have applied in their absence, were found not unreasonable. The fact that a lower rate was applicable over the Illinois Central than over the Monon and the Terre Haute does not in itself warrant a finding that the rate of the latter two lines was unreasonable, and the record otherwise does not warrant such a finding.

Those shipments moving over the Terre Haute were classified by the Baltimore & Ohio Chicago Terminal in its Barr yard. The latter carrier alternated monthly with the Illinois Central in switching them from that yard to Riverdale, 1.75 miles, from which point the Illinois Central switched them to its pier track No. 1, a distance of 17 miles. Those moving over the Monon were classified by the Belt Railway of Chicago in its clearing yard. From there they were switched by the Illinois Central over the rails of the Belt Railway to Burnside, 8.6 miles, thence over its own rails to its pier track No. 1, a distance of 12 miles. The 50-cent charge of the Illinois Central, which has since been increased to 70 cents, applied from Riverdale and from Burnside. The charges of the two terminal lines named, \$6 per loaded and \$3 per empty car, were absorbed by the Terre Haute and the Monon.

Complainant contends that the Illinois Central's pier track No. 1 should be listed in Agent Lowrey's tariff as an industry track. Under that tariff the line-haul carrier would then absorb the switching charge of the Illinois Central. This point of delivery is a less-than-carload freight station of the Illinois Central, which was opened to complainant's shipments as affording the only practicable point of delivery. The shipments were transferred from this track to the place of their use by barges, into which they were loaded by complainant, usually from the cars.

The record affords no basis for finding that this pier track should be listed as an industry track of the Illinois Central, or that the charge of the Illinois Central is unreasonable.

We find that the rates and switching charge assailed were not and are not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 12475.

MURRAY & LAYNE COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted November 21, 1921. Decided March 18, 1922.

Rates on apples, in carloads, from Monitor and Wenatchee, Wash., to Deming, N. Mex., found not unreasonable. Damage as a result of alleged undue prejudice not shown. Complaint dismissed.

Hugh H. Williams and Edwin F. Coard for complainant.

T. J. Norton, F. E. Andrews, and F. P. Cruice for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation engaged in the wholesale grocery and produce business at Deming, N. Mex., by complaint filed February 27, 1921, alleges that the rate charged on three carloads of apples shipped to Deming during November, 1918, two from Monitor, Wash., and one from Wenatchee, Wash., was unjust, unreasonable, and unduly prejudicial. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

Monitor and Wenatchee are on the Great Northern. The shipments aggregating 111,474 pounds, moved over that road to Spokane, Wash., thence over the Union Pacific system to Denver, Colo., and the Atchison, Topeka & Santa Fe through Rincon, N. Mex., to Deming, 2,329 and 2,322 miles, respectively. Charges of \$1,521.62 were collected at a combination rate of \$1.865, composed of a commodity rate of \$1.10 to El Paso, Tex., and the class-C rate of 26.5 cents from El Paso to Deming. The shipments did not pass through El Paso, but it was the basing point for making the rate to Deming. Complainant contends that the rate assessed was unreasonable to the extent that it exceeded \$1.10.

A commodity rate of \$1.10 was contemporaneously in effect on apples in carloads from Monitor and Wenatchee to El Paso and

Dallas, Tex., New Orleans, La., Kansas City and St. Louis, Mo., Chicago, Ill., and New York, N. Y., from 2,187 to 2,924 miles. The same rate applied on apples from Everett, Seattle, Tacoma, and Bellingham, Wash., to Deming, 2,115 to 2,359 miles, and became effective from Monitor and Wenatchee to Deming February 19, 1919. A rate of \$1 to points in eastern territory was in effect for a number of years prior to June 25, 1918. On that date it was increased to \$1.25 under General Order No. 28 of the Director General of Railroads, but upon representations of the western apple-growing interests it was reduced to \$1.10 on October 23, 1918. On May 31, 1919, the rate to eastern territory, as well as the rate to Deming, was increased to \$1.375.

Defendants admit that ordinarily the rate from Monitor and Wenatchee to Deming should not be higher than to Dallas and other eastern points, but contend that the \$1.10 rate from Washington apple-producing territory to eastern points was an abnormally low rate which was established in order that producers in that territory might market their product in competition with apples grown in the East. Local competition is also encountered in marketing apples at Deming. The rate charged yielded ton-mile earnings of 11.8 mills, and, based on the average weight of these shipments, 21.8 cents per car-mile.

We find that the rate assailed was not unreasonable.

Complainant has not shown that it was damaged as a result of any undue prejudice that may have existed. The complaint will be dismissed.

CAMPBELL, Commissioner, dissenting:

The rate of \$1.10 claimed by complainant was the contemporaneous general basis from the producing points to eastern and southern destinations for similar or greater distances, and this rate also applied to Deming from other Washington points. No reason appears why Deming should not have had the benefit of the basis in effect to the other points.

68 I. C. C.

No. 12383.¹

CHEVROLET MOTOR COMPANY OF NEW YORK

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & EASTERN
ILLINOIS RAILROAD COMPANY, ET AL.

Submitted September 29, 1921. Decided March 24, 1922.

Rates on auto-body woodwork, knocked down, and on untrimmed floor, toe, and running boards, in the white, in carloads, from St. Louis, Mo., to Tarrytown, N. Y., found not unreasonable or unjustly discriminatory. Complaint dismissed.

Frank A. Gaynor, John T. Smith, and C. R. Scharff for complainant.

Thomas M. Woodward for director general, as agent.

Parker McCollester for defendant carriers.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, by complaint filed February 21, 1921, alleges that the rating applied for the transportation of auto-body woodwork, knocked down, in the white, in carloads, and floor, toe, and running boards, in the white, in carloads, from St. Louis, Mo., to Tarrytown, N. Y., since February 15, 1919, resulted in the assessment of rates which were and are unreasonable and unduly discriminatory. We are asked to prescribe a rating not to exceed sixth class, and to award reparation.

The auto-body woodwork involved is similar to that described in *Chevrolet Motor Co. v. Director General*, 59 I. C. C., 685, and the floor, toe, and running boards are the same as were under review in *Chevrolet Motor Co. v. Director General*, 62 I. C. C., 175, except that the boards involved herein are untrimmed, that is, not painted or covered with linoleum, nor with edges bound with aluminum strapping, but merely shaped and bored for the reception of attachments and fittings.

¹ This report also embraces No. 12383 (Sub-No. 1), Same v. Same.
68 I. C. C.

Between February 15 and December 30, 1919, auto-body woodwork, floor, toe, and running boards were not specifically rated in the classification, but the fifth-class rate of 52.5 cents, minimum 30,000 pounds, applicable on vehicle stock or stuff, in the white, was assessed. On the latter date, the rating on vehicle stock or stuff was eliminated from the classification and the fifth-class rating on automobile passenger bodies, not finished, completely knocked down, was applied. On August 15, 1920, the consolidated classification provided specifically for auto-body parts at the fifth-class rating. The fifth-class rate since August 26, 1920, has been 73.5 cents, minimum 36,000 pounds.

Complainant seeks the lumber rating, or sixth class. Auto-body woodwork and floor, toe, and running boards do not constitute a completed automobile body, yet they have undergone certain processes of manufacture and have been partly finished. The boards are shipped in mixed carloads. The articles comprising the body woodwork are also shipped in mixed carloads, in the white.

Comparisons of the rates charged with those on lumber and lumber products in the West and Southwest were made by the complainant, showing the earnings under the rates assailed and those yielded by lumber and lumber products. Such comparisons are of little value, because lumber and its products move generally in that territory at commodity rates, while in official classification territory, lumber usually moves at sixth-class rates, and according to defendants' witness, lumber products invariably move under the fifth-class rating. Defendants testified that a careful search showed that no articles analogous to those here involved take less than the fifth-class rating in official classification territory.

To sustain the contention that the rates were unreasonable, complainant refers to the cases previously cited. In the former, we held the assessment of the class-A rate on body woodwork from St. Louis, Mo., to Oakland, Calif., unreasonable to the extent that it exceeded the class-B rate, which applied on built-up wood, sash, and doors. In the latter, we held, in substance, that the fourth-class and class-A rates on untrimmed floor, toe, and running boards were unreasonable to the extent that they exceeded the class-B rate applicable on built-up wood, sash, and doors. The traffic involved herein is rated the same in official classification territory as built-up wood, sash, and doors, which conforms with the above decisions. It does not appear that auto-body woodwork and untrimmed floor, toe, and running boards should be rated the same as lumber.

There was some testimony that prior to the period involved in this complaint, the traffic had moved under the sixth-class rate ap-

plicable on vehicle stocks or stuff, in the rough. Complainant's witness admitted that some of these articles were in the white and others were in the rough, and that when shipped in mixed carloads, as were these shipments, the rating applicable was fifth class.

We find that the rates assailed were not and are not unreasonable or unjustly discriminatory. The complaint will be dismissed.

No. 12381.

CHEVROLET MOTOR COMPANY OF MICHIGAN

v.

DIRECTOR GENERAL, AS AGENT, GRAND TRUNK
WESTERN RAILWAY COMPANY, ET AL.

Submitted September 29, 1921. Decided March 24, 1922.

Rates charged on automobile-tire carriers, in carloads, from Detroit to Flint, Mich., during Federal control, found not unreasonable or unjustly discriminatory. Complaint dismissed.

Frank A. Gaynor, John T. Smith, and C. R. Scharff for complainant.

Thomas M. Woodward for director general.

Parker McCollester for defendant carriers.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation, manufacturing automobiles at Flint, Mich., by complaint filed February 21, 1921, alleges that the rates charged on automobile-tire carriers, in carloads, from Detroit, Mich., to Flint since September 20, 1917, were and are unreasonable and unduly discriminatory. We are asked to award reparation and prescribe a classification rating, but our jurisdiction in this case is confined to the period of Federal control.

Complainant's tire carrier consists of a steel rim, with brackets to bolt it to the car and a crosspiece of steel to lock it and support the license plate. It was not specifically classified, but, pursuant to

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a ruling of the official classification committee, was given the fourth-class rating, carloads, applicable on hardware, not otherwise specified.

Complainant contends that the rates charged were unreasonable to the extent that they exceeded the fifth-class rate applicable on automobile parts n. o. i. b. n., machinery, and certain other commodities claimed to be analogous, and seeks reparation to that basis. The contention is supported by exhibits, including rate comparisons, but similarity of transportation characteristics is not particularly developed.

In *Buick Motor Co. v. Director General*, 60 I. C. C., 669, which involved the reasonableness of the rates on automobile-tire carriers from and to these same points, we overruled the contention of the complainant that tire carriers were automobile parts, and also held specifically that the fourth-class rates applicable on the shipments were not unreasonable. Nothing herein warrants a different conclusion.

We find that the rates assailed during Federal control were not unreasonable or unjustly discriminatory. The complaint will be dismissed.

68 I. C. C.

No. 12636.

HUNT, HELM, FERRIS & COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted November 21, 1921. Decided March 20, 1922.

1. Failure of defendants to absorb interchange switching charges at Harvard, Ill., found not unreasonable, unjustly discriminatory, or unduly prejudicial.
2. Interchange switching charge of Chicago, Harvard & Geneva Lake Railway at Harvard found not unreasonable or otherwise unlawful.
3. Interchange switching charge of Chicago & North Western Railway at Harvard found unreasonable. Reasonable charge prescribed.

F. L. Fisher for complainant.*R. H. Widdicombe* for Chicago & North Western Railway Company.*O. C. Macy* for Chicago, Harvard & Geneva Lake Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By Division 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing agricultural implements and other farm equipment at Harvard, Ill., alleges that the charges assessed by the Chicago, Harvard & Geneva Lake, an electric line, and the Chicago & North Western, hereinafter called the Geneva Lake and the North Western, respectively, for switching interchange traffic, in carloads, between their interchange track and complainant's plant are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe maximum charges of \$2.50 per car, and to require the establishment of a reciprocal arrangement under which each of these carriers will absorb the interchange charge of the other.

Complainant's plant apparently consists of a factory, lumber shed, and foundry. The factory is located between the main-line tracks of defendants and by means of sidetracks is served directly by each. The lumber shed is located on sidetracks connecting only with the North Western and the foundry on sidetracks connecting only with the Geneva Lake. What portion, if any, of these sidetracks is owned

by complainant is not disclosed. For switching cars between the foundry and the interchange track the Geneva Lake charges \$5 per car. The tariffs of the North Western contain no charge strictly applicable to the switching of cars from the interchange track to the lumber shed, but it appears to be the practice of that carrier to apply a charge of \$15 per car, published as a minimum in connection with class rates between points on the North Western and the Geneva Lake.

At Aurora, Sterling, and Freeport, Ill., and Janesville, Wis., where competitors of complainant are located, the North Western, under reciprocal arrangements, absorbs switching charges of connecting lines. Defendants' witness testified that the industries at those points are "divided" as between the North Western and competing lines, and that all industries at Harvard, except complainant's plant, are served exclusively by the North Western. In the absence of unjust discrimination or undue prejudice a carrier can not be compelled to absorb the switching charges of a connecting line. Defendants absorb no switching charges at Harvard, and in view of the dissimilarity of conditions as between that point and the other points named, the different practices of the North Western are not shown to result in undue prejudice.

At the hearing complainant asked that the respective charges be fixed at \$3 per car, which is the charge of the North Western at the competitive points referred to. Defendants' witness testified that this does not represent a reasonable charge for the service performed at those points, but is in the nature of an arbitrary employed to facilitate joint accounting.

The average distance from the interchange track to the points at which the Geneva Lake receives or delivers cars is about 1,400 feet. Its charge was originally established in 1916, has not been changed and is not here shown to be unreasonable. The average distance in the case of the North Western is about 1,500 feet, and complainant contends that the service adds but little to the cost incurred by this carrier in its other regular switching at this plant. The North Western maintains a charge of \$9 per car for interterminal switching of carload freight from industries on its rails to interchange tracks of connecting lines when destined to industrial tracks of such lines within the switching limits of one station or industrial switching district. This charge, in the absence of a line haul, is applicable on local traffic at all stations on its lines in Illinois, except Chicago.

Upon this record we find that defendants' failure to provide for reciprocal absorption of the charges assailed was not and is not unreasonable, unjustly discriminatory or unduly prejudicial; that the

charge assessed by the Geneva Lake is not unreasonable or otherwise unlawful; but that the charge assessed by the North Western for switching interstate traffic, in carloads, between its connection with the Geneva Lake and complainant's plant is, and for the future will be, unreasonable to the extent that it exceeds, or may exceed, \$9 per car.

An appropriate order will be entered.

No. 12486.

NATIONAL SUPPLY COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted October 31, 1921. Decided March 25, 1922.

Rates applicable on bituminous coal, in carloads, from West Clinton, Ind., to Ottumwa, Iowa, and reconsigned to various destinations in Iowa and Nebraska, found not unreasonable or unduly prejudicial. Complaint dismissed.

G. W. Abarr for complainant.

Kenneth F. Burgess and *J. W. Weingarten* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation dealing in coal at Lincoln, Nebr. By complaint filed February 24, 1921, it alleges that the rates charged on 20 carloads of bituminous coal shipped during October, 1919, from West Clinton, Ind., via Chicago, Ill., and Ottumwa, Iowa, to various points in Iowa and Nebraska were unreasonable and unduly prejudicial to the extent that they exceeded those applicable via Peoria, Ill. Reparation and reasonable and nonprejudicial rates for the future are sought.

The shipments were consigned to Ottumwa and were routed by the consignor over the Chicago, Terre Haute & Southeastern and the Chicago, Burlington & Quincy, hereinafter called the Terre Haute and Burlington, respectively. No intermediate carrier or junction point was specified. They moved over the Terre Haute to Chicago

and the Burlington to Ottumwa, where they were reconsigned to points in Iowa and Nebraska on the Burlington, to which no joint rates applied from West Clinton. Via Peoria the services of an intermediate carrier, the Lake Erie & Western, would have been required.

The applicable combination rates via Chicago ranged from \$3.97 to \$4.22 per net ton and were higher than those in effect via Peoria for distances 97 miles less than via Chicago. The applicable rates yielded ton-mile earnings ranging from 5.8 to 7.2 mills for distances from 551.1 to 747.5 miles.

Defendants contrast these earnings with higher earnings on coal for comparable distances from points in Indiana, Illinois, Minnesota, Wisconsin, and Ohio to points in Iowa, Nebraska, Kansas, and North Dakota.

No evidence was offered by complainant, except a showing that the combination rates via Peoria were lower than those via Chicago. It contends that, as the carriers were under Federal control and operated as a unified system, and as the routing specified by shippers was disregarded when speed and efficiency of service were thereby promoted, the shipments should have been forwarded via Peoria to avoid the congested district of Chicago. General Order No. 1 of the Director General of Railroads provided that, under certain circumstances, the routing of shippers was to be disregarded. The same order provided that the rates applicable over the routes designated should be observed.

Upon this record we find that the rates assailed were not and are not unreasonable or unduly prejudicial. The complaint will be dismissed.

No. 12316.¹
SWIFT & COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted January 31, 1922. Decided March 18, 1922.

Minimum charges on less-than-carload shipments from East St. Louis, Ill., and Moultrie, Ga., to points in Southern States found not unreasonable, but those from East St. Louis found illegal. Reparation awarded. Complaint in No. 12335 dismissed.

R. D. Rynder and W. A. Mayfield for Swift & Company; *Paul E. Blanchard and W. W. Manker* for Armour & Company, complainants.
John F. Finerty and Thomas M. Woodward for director general.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

By Division 4:

Exceptions were filed by the Director General of Railroads, as agent, to the report proposed by the examiner in No. 12336, and the cases were orally argued.

By complaints filed February 17 and 18, 1921, as amended, it is alleged that the minimum charges collected by defendants on a number of less-than-carload shipments of fresh meat, packing-house products, and other commodities, generally shipped in peddler cars, between June 25, 1918, and May 30, 1919, from East St. Louis, Ill., to points in Kentucky, Tennessee, Mississippi, Virginia, Alabama, North Carolina, South Carolina, Georgia, and Florida, and between June 25, 1918, and June 14, 1919, from Moultrie, Ga., to points in Georgia and Florida, were unreasonable. The prayer is for reparation.

SHIPMENTS FROM EAST ST. LOUIS.

The shipments in Nos. 12316 and 12336 moved from East St. Louis over practically all lines serving the Southern States. On June 24, 1918, the southern classification contained the following provisions for minimum charges on less-than-carload shipments:

¹ This report also embraces No. 12336, *Armour & Company v. Director General, as Agent*; and No. 12335, *Swift & Company v. Georgia Northern Railway Co., Director General, as Agent, et al.*

Section 1. Unless otherwise specified in published tariffs, the minimum charge on a single shipment of one class, classified first class or lower, shall be for 100 pounds at the class or commodity rate to which it applies, and if classified higher than first class, the minimum charge shall be for 100 pounds at the first class rate.

Section 3. In no case shall the charge on a single shipment be less than 25 cents.

In some instances, and particularly in connection with these shipments, similar minimum-charge provisions were published in the tariffs naming the rates. They provided that in no case should the charge be less than 25 cents, 50 cents, or 75 cents, depending upon the rate or rating, the line handling the traffic, and the destinations. General Order No. 28 provided, among other things, that "the minimum charge on less-than-carload shipments shall be as provided in the classification governing, but in no case shall the charge on a single shipment be less than 50 cents." On June 25, 1918, the ultimate minimum charge in the classification was made 50 cents instead of 25 cents. The general supplement to the tariffs making effective the general increases of June 25, 1918, provided in rule 9 that the minimum charge on less-than-carload shipments should be as provided in the classification "or tariff" governing, but in no case should the charge on a single shipment be less than 50 cents. By this supplement, the ultimate minimum charges named in the tariffs became applicable instead of that named in the classification. Defendants contend that the ultimate charges of 50 and 75 cents in the tariffs were also increased 25 per cent by this supplement and became 63 and 94 cents, respectively. The tariff provisions on which this contention is based are illustrated by the following provisions contained in supplement 28 to Agent Speiden's tariff I. C. C. No. 153, effective June 25, 1918:

Effective June 25, 1918, all rates then in effect named in tariffs enumerated herein and in prior supplements thereto, as indicated, to each of which tariffs this is a special supplement, are increased to the rates shown in Column B in Table of Rates on pages 4 to 6, inclusive, hereof, except as otherwise provided in "Exceptions to Table of Rates" on pages 7 and 8.

* * * * *

Where rates named in tariffs or prior supplements thereto, as enumerated herein, in cents per hundred pounds, per package, per ton, per shipment, or other unit (except rates in cents per car—see Rule 6) are included in the figures shown in column A, the rates shown opposite thereto in column B will apply.

But the tariff provisions stating that in no case shall the charge on a single shipment be less than 50 cents or 75 cents can not be regarded as naming rates within the meaning of the provision quoted from Agent Speiden's tariff I. C. C. 153. At the top of every page containing the table of rates referred to in the rule quoted is the following note: "For minimum rates and charges, see rule

9," which further indicates that the rates increased by these tables did not include these ultimate minimum charges. The applicable minimum charges therefore were 50 or 75 cents as named in the tariffs without the 25 per cent increase. Many of the shipments were overcharged.

Two of the applicable tariffs, Agent Speiden's I. C. C. No. 153 and Agent Washburn's I. C. C. No. 214, were supplemented effective November 7, 1918, and October 7, 1918, respectively, and the carriers attempted to provide at that time that the minimum charge of 75 cents would be 94 cents. The items which sought to increase the charges stated that they were reissues, effective June 25, 1918. This was based on an erroneous assumption. The items were not effective on the date stated, and as they were excepted from the general effective date of the supplements, October 7 and November 7, 1918, they did not become effective, and the charges collected thereunder were illegal.

Upon protest from complainants and others, the director general authorized the carriers to amend or correct their tariffs and apply the minimum charge of 50 cents carried in the governing classification. The changes became effective on various dates on and after October 4, 1918.

Complainants contend that the applicable charges were unreasonable and that General Order No. 28 did not authorize the carriers to assess or collect minimum charges in excess of 50 cents. The subsequent revision was effected under a freight-rate authority of the United States Railroad Administration authorizing rates to be published on short notice to correct typographical or clerical errors in tariffs naming increases under General Order No. 28. Without attempting to say whether or not General Order No. 28 was complied with, the rates attacked as unlawful by reason of the alleged failure of the carriers to observe the terms of that order were filed with the commission by the President through his duly appointed agent, and the fact that the provisions of that order may not have been strictly observed does not establish the allegation of unreasonableness. *Anaconda Copper Mining Co. v. Director General*, 57 I. C. C., 723.

In an effort to prove the applicable minimum charges in excess of 50 cents unreasonable to that extent, reference is made to *Increased Rates*, 1920, 58 I. C. C., 220, where the carriers were refused permission to increase their minimum charges and also to *Minimum Charge on L. C. L. Shipments*, 61 I. C. C., 727, where we found that the carriers had failed to justify increases in the then existing minimum charges of 50 cents. Other than the showing that the minimum charges were reduced, complainants introduced no substantial evidence to show that they were unreasonable.

We find that the applicable minimum charges assailed in Nos. 12316 and 12336 were not unreasonable, but that the charges collected on many of the shipments were in excess of those applicable and therefore illegal; that complainants made the shipments and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those applicable; and that they are entitled to reparation with interest. Complainants should comply with Rule V of the Rules of Practice.

SHIPMENTS FROM MOULTRIE.

The shipments in No. 12335 moved from Moultrie to destinations on lines connecting with or reached by way of the Atlanta, Birmingham & Atlantic or the Georgia Northern, each shipment moving over two or more lines. About one-half of the shipments moved over the Atlanta, Birmingham & Atlantic were handled as ordinary less-than-carload shipments, and the remainder moved in peddler cars.

The basis of rates between points in Georgia for hauls over two or more lines was and is the combination of locals, less 10 per cent. Prior to June 25, 1918, the tariffs of each of the lines over which the shipments moved, or the governing classification, named minimum charges of 25 cents on less-than-carload shipments and on that date they were increased to 50 cents under General Order No. 28. These charges continued in effect throughout the period covered by the complaint and it was upon the combination basis, less 10 per cent, that the charges assailed were collected on the shipments to points in Georgia. On shipments destined to points in Florida the full combination of local minimum charges was collected. The charges attacked range from 90 cents to \$1.35 per shipment. Effective June 14, 1919, under freight-rate authority No. 6182, as amended, the Georgia classification, which governed, was amended to provide a minimum charge of 60 cents for the continuous through movement over two or more lines on less-than-carload shipments, and it is upon basis of the subsequently established minimum that complainant asks reparation.

When these shipments moved there were published between certain points in Georgia joint rates and minimum charges over two or more lines which were the same as the combination of locals, and the minimum charges authorized under General Order No. 28 were applied but once to these joint rates, although the minimum charges were applied to each factor of combination rates. While the cause of this complaint is due entirely to the fact that combination charges applied between the points, complainant does not attack the combi-

nation basis of rates and charges between points in Georgia, which adjustment continued in effect and applied on shipments where the rates and weights produced charges in excess of the minimum, even after the tariffs were amended limiting the minimum charge to the continuous movement, instead of to each factor of the combination rate. Complainant states that by applying the joint minimum charges to some points and the combination minimum to others, the rates and minimum charges to many points exceeded those to more distant points to which they were directly intermediate. It appears that this condition was changed when the minimum charges were applied to the through continuous movements at combination rates.

Defendants direct attention to the fact that where the minimum charges prior to June 25, 1918, were made up of three factors of 25 cents each less 10 per cent, the application of one minimum charge to through movements after that date results in charges lower than those in effect prior thereto, notwithstanding the fact that General Order No. 28 contemplated increases and not reductions. They urge that the subsequent reduction in the minimum charges was not an admission that the prior higher charges were unreasonable for the services performed. Defendants contend that claims for losses on small packages of less-than-carload freight, due to pilferage, is considerably in excess of the average losses of all freight, and that the terminal station services performed in connection with less-than-carload shipments materially exceed the services on other freight, and particularly where the shipments have to be transferred between connecting carriers, as many of those involved were handled. Defendants state that the intrastate rates in Georgia are on a generally lower basis than the interstate rates applying to that territory. The minimum charges sought are compared by defendants with generally higher charges for similar services in the southwestern territory where the rates have been prescribed in *Extension of Memphis-Southwestern Scale*, 62 I. C. C., 596, and previous cases.

We find that the minimum charges assailed in No. 12335 were not unreasonable. The complaint therein will be dismissed.

No. 12321.¹

GILPIN, LANGDON & COMPANY, INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT.

Submitted January 25, 1922. Decided April 3, 1922.

Rate charged on imported pyrethrum flowers, in carloads, from Seattle and Tacoma, Wash., to Baltimore, Md., found unreasonable. Reparation awarded.

A. E. Beck for complainants.

John F. Finerty and *Thomas M. Woodward* for defendant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued before us. We have reached conclusions differing from those recommended by him.

The complainant corporations allege that the domestic third-class rate of \$3.315 charged on 32 carloads of imported pyrethrum flowers shipped from Seattle and Tacoma, Wash., to Baltimore, Md., between June 25, 1918, and May 29, 1919, was unreasonable to the extent that it exceeded the import rate of \$2 established on the last date mentioned. We are asked to award reparation. Rates are stated in amounts per 100 pounds.

Pyrethrum flowers are cultivated on a commercial scale in Japan. They are used in the manufacture of insecticides. After drying, the flowers are packed in mats and pressed into bales of an average gross weight of 480 pounds. The shipments average about 56,000 pounds per car. The commodity was worth from 15 to 25 cents per pound at the Pacific ports.

Prior to General Order No. 28 of the Director General of Railroads, effective June 25, 1918, pyrethrum flowers moved from Pacific-coast ports to Baltimore on an import commodity rate of \$1. Effective on that date and in accordance with the terms of that order, all import and export rates were canceled. As a consequence, the domestic

¹ This report also embraces No. 12321 (Sub-No. 1), *McCormick & Company, Incorporated, v. Same*.

third-class rate of \$3.315 became applicable and was charged on complainant's shipments. Protests and requests for lower commodity rates resulted in the publication, effective May 29, 1919, of an import rate of \$2.

The importation of pyrethrum flowers for the manufacture of insect powder has grown notably in recent years. In 1916 the imports amounted in round figures to 442,000 pounds; in 1917 to 2,189,000 pounds; in 1918 to 2,439,000 pounds; in 1919 to 6,184,000 pounds; and in 1920 to 5,055,000 pounds. Complainants explain that the increased freight rates, effective June 25, 1918, did not decrease the volume of their movement because the shipments were contracted for in advance. They state that the general increase in the sale of this insecticide is due to extensive advertising and in part to the activities of the Public Health Service.

Complainants do not contend that pyrethrum flowers are improperly rated, nor do they attack the reasonableness of the third-class rates as such. Their case is based on the theory that a commodity rate should have applied during this period. Complainants import 25 or more carloads per year. The domestic third-class rate of \$3.315 represented an increase of 231 per cent over the previous import rate. The percentage of increase effectuated by General Order No. 28 alone is not controlling, nor is the subsequent voluntary reduction of the rate.

Witness for defendant states that the import rate formerly in effect had been made to meet water competition by way of the Panama and Suez Canals, and that the import rate made effective May 29, 1919, was established in view of the resumption, or expected resumption, of the same type of competition.

Import commodity rates less than \$2 contemporaneously applied from and to these points on numerous commodities, including bagging, cocoa beans, copra, green coffee, chinaware, gums, licorice root, matting, bean oil, fish oil, rattan, crude rubber, potato flour, tea, and nonedible tea sweepings. On May 29, 1921, the rate on camphor was \$1.50, on spices \$1.25, on tea \$1.50, and on leaf tobacco \$1.875. The only rates higher than \$2 shown by defendant are \$3.315 on kapok and cotton linters, \$2.815 on dyewoods, dates, cotton waste, and desiccated cocoanut, \$2.65 on dried eggs, and \$2.375 on alum and pickled sheepskins.

In *Monsanto Chemical Works v. S. P. Co.*, 63 I. C. C., 417, we found an import commodity rate of \$1.875, increased from \$1 prior to June 25, 1918, on imported tea waste, in carloads, from San Francisco, Calif., to St. Louis, Mo., unreasonable to the extent it exceeded a rate of \$1.40 established May 29, 1919, the latter yielding 12.7 mills per ton-mile and 81.8 cents per car-mile.

In *Woolson Spice Co. v. Director General*, 53 I. C. C., 698, and *Frame & Co. v. Director General*, 55 I. C. C., 721, we found the fourth-class rates of \$2.69 and \$2.815 increased from 80 cents prior to June 25, 1918, on imported pepper, unground, in carloads, from Seattle, Wash., to Toledo, Ohio, and New York, N. Y., respectively, unreasonable to the extent they exceeded a rate of \$1.565 established October 22, 1918, the latter yielding 13 mills per ton-mile and 35.5 cents per car-mile to Toledo and still lower earnings to New York.

The rate assailed herein yielded about 22 mills per ton-mile and 61 cents per car-mile and the subsequently established rate of \$2 yielded about 13 mills and 37 cents, respectively.

We find that the rate assailed was unreasonable to the extent that it exceeded \$2; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice.

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No. 11596.

HYDRAULIC-PRESS BRICK COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILROAD COMPANY, ET AL.

Submitted June 17, 1921. Decided March 30, 1922.

Rates on run-of-mine bituminous coal, in carloads, from certain mines in the Brazil district, in Indiana, to complainant's plant at Brazil, during Federal control, found unreasonable. Reparation awarded.

R. B. Coapstick and O. P. Gothlin for complainant.

Royal T. McKenna, John F. Finerty, and John C. Brooke for director general, as agent; James Stillwell, Guernsey Orcutt, and Fred W. Heid for defendants; and G. H. Kummer and K. L. Richmond for director general and Chicago & Eastern Illinois Railroad Company and receiver.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND LEWIS.

BY DIVISION 3:

Exceptions were filed by complainant and defendants to the report proposed by the examiner, and the case was orally argued before us.

Complainant, a corporation operating a brick plant at Brazil, Ind., alleges that the rates charged on carload shipments of run-of-mine bituminous coal from mines within the Brazil district, in Indiana, to its plant at Brazil, on and after June 25, 1918, were unjust and unreasonable. Reparation is sought. Our jurisdiction in this proceeding is limited to the period of Federal control. Rates will be stated in amounts per net ton.

Complainant's plant is on the Pittsburgh, Cincinnati, Chicago & St. Louis, hereinafter called the Pennsylvania, about 1.5 miles north of the latter's Brazil yard, and is served by sidings owned by that carrier. The mines at which the shipments originated are eight in number, lying within a radius of about 8 miles from complainant's plant and divided in location equally between the Pennsylvania and the Chicago & Eastern Illinois. All loaded and empty movements between the Pennsylvania mines and complainant's plant were made

by a total of five switching crews of that carrier. Some of these crews also performed the service between the plant and the Brazil yard in connection with the traffic from the Chicago & Eastern Illinois mines. The shipments averaged approximately 45 tons per car and about one car per day.

Two of the Pennsylvania mines are at the end of a spur about 0.5 mile long, connecting with the main line about 1.5 miles southwest of the Brazil yard, the mines being approximately 3.5 miles from complainant's plant. There being no track scale at Brazil, all loaded cars from those mines are first moved to Seeleyville, Ind., about 7 miles to the west on the main line, for weighing and classification, and thence to their destinations. These shipments therefore receive an out-of-line haul of about 14 miles. No reason appears why they could not be weighed at Knightsville, Ind., east of Brazil, which would require an out-of-line haul of about 4 miles. A third mine is on a short spur west of Brazil and 5.4 miles from complainant's plant. Loads from that mine are first taken to Knightsville for weighing, thus receiving an out-of-line haul of approximately 4 miles. The fourth Pennsylvania mine is on a branch south of Knightsville, 8.7 miles from the plant by a direct haul.

The four Chicago & Eastern Illinois mines are to the west of Brazil, two of them being 4 miles and the others 5 and 6 miles from complainant's plant. As stated, the movement is through the Pennsylvania's yard at Brazil.

Prior to June 25, 1918, the applicable rates from the Pennsylvania mines were 40 cents from the mine south of Knightsville and 35 cents from the others. On that date those rates were increased to 60 cents. On the same day like rates of 60 cents from the Chicago & Eastern Illinois mines, applicable for hauls up to 15 miles, were established in lieu of rates of 35 cents for hauls of 5 miles and under, and of 40 cents for hauls over 5 and up to 15 miles. Effective October 5, 1918, the rates from all mines to all points within the Brazil district were made 70 cents, and on August 1, 1919, were reduced to 60 cents. The successive group rates were made applicable to hauls over one or more lines; for example, from mines on either defendant carrier's line to Terre Haute, Ind., approximately 15 miles west of Brazil.

Complainant contends that the rates assailed should not have exceeded 35 cents for hauls not exceeding 5 miles and 40 cents for hauls over 5 and not exceeding 10 miles, and it is to those bases that reparation is sought. For the several loaded hauls, using the direct-route distances of from 8.7 to 3.5 miles from mines to plant, the earnings under the 70-cent rate were \$31.50 per car and ranged from 8.03 to 20 cents per ton-mile and from \$3.62 to \$9 per car-mile, based upon

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the average weight of these shipments; under the 60-cent rate, \$27 per car, from 6.9 to 17.1 cents per ton-mile and from \$3.10 to \$7.71 per car-mile. By way of comparison complainant instanced the Pennsylvania's charges for switching coal and other low-grade commodities at various points, such as \$2.50 and \$5 per car and 20 and 30 cents per ton, but with slight information concerning the details of the services in most cases. Reference is made also to *Utilities Development Corp. v. P., C., C. & St. L. R. R. Co.*, 56 I. C. C., 694, in which a group rate of 70 cents, as applied to the movement subsequent to June 24, 1918, of coal from Bicknell to Edwardsport, Ind., 4.4 miles, in the neighboring Linton district, was found unreasonable to the extent that it exceeded 40 cents. Complainant also cites a recent decision of the Public Service Commission of Indiana prescribing, inter alia, a rate of 55 cents on coal from Indiana mines, when including road hauls, for distances not exceeding 10 miles, and a maximum charge of \$10 per car for switching movements not involving road hauls. It is complainant's contention that the movements in this case are purely switching movements because performed wholly by switching engines and crews, although in part over main-line tracks.

The principal defense is an attempted determination of the terminal cost of handling this traffic, computed on basis of the so-called Saur-Coverstson formula, 1920, discussed in *Clinton Paving Brick Co. v. Director General*, 66 I. C. C., 338. Applying that formula to the records obtained during a test period of one week in September, 1920, and using an operating ratio of 66.67 per cent, defendants arrive at a total average terminal cost to the Pennsylvania and Chicago & Eastern Illinois on this traffic, including return on investment, taxes, and rentals, of 42.16 cents per ton.

The result claimed for this test can not be given much weight. Only the ultimate figures were submitted; the working sheets were not produced, though counsel for complainant insisted upon their production, and the figures are not susceptible of check by our accountants. It will therefore be unnecessary to discuss the formula or its defects. Even if given full weight, the result of the test falls far short of justifying the rates assailed.

In *Clinton Paving Brick Co. v. Director General*, *supra*, we had under consideration Indiana intrastate rates on mine-run bituminous coal charged during Federal control subsequent to June 24, 1918. Among them were the rates from mines in the Brazil coal district on the Pennsylvania and Chicago & Eastern Illinois to plants within the Brazil switching district for distances ranging from 8.2 to 10 miles. We found them unreasonable to the extent that they exceeded 45 cents.

Following the case last cited, we find that the rates assailed were unreasonable to the extent that they exceeded 45 cents per net ton. We further find that complainant made shipments as described and paid and bore the charges thereon; and has been damaged to the extent that the charges paid exceeded those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

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No. 11938.

ANDERSON, CLAYTON & COMPANY ET AL.

v.

FORT SMITH & WESTERN RAILROAD COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted October 10, 1921. Decided March 24, 1922.

Defendants' failure to absorb out of the through rates the entire compress charge of 15 cents per 100 pounds on shipments of cotton originating on the defendant carriers' lines subsequent to November 1, 1918, compressed at Weleetka, Okla., and reshipped to interstate destinations, found unreasonable. Reparation awarded.

H. D. Driscoll and *T. H. Pointer, jr.*, for complainants and Southern Products Company, intervener.

Frank B. Burford and *G. L. Oliver* for Fort Smith & Western Railroad Company and receiver, and St. Louis, El Reno & Western Railway Company and receiver.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are the Chickasha Cotton Oil Company, a corporation; W. D. Felder & Company, a corporation; Anderson, Clayton & Company, a partnership composed of F. E. Anderson, M. D. Anderson, Will Clayton, and Ben Clayton; Hooper & Day, a partnership composed of H. W. Hooper, G. V. Day, E. L. Krohen, and J. W. Roberts; and R. H. Hooper & Company, the predecessor in interest of the last-named partnership. By complaint, filed November 1, 1920, as amended, they allege that defendants' refusal, during the period November 1, 1918, to January 22, 1919, to absorb out of the through rates the full compress charge of compress companies on various shipments of cotton originating on the defendant carriers' lines and moving to interstate destinations, thereby compelling complainants to make payments to such compress companies in addition to the transportation charges, was unreasonable and unduly preferential. We are asked to award reparation. An intervening petition filed by the Southern Products Company, a corporation, contains similar allegations and asks reparation. The director general,

as agent, was made a party defendant subsequent to the hearing. He agreed to submit the case upon the record. Damage under section 3 of the act is not established, and the allegation of undue prejudice need not be considered. Compress charges hereinafter referred to are stated in cents per 100 pounds.

The defendant carriers are the St. Louis, El Reno & Western and the Fort Smith & Western, nonfederally controlled lines during the period herein considered. Their lines extend, respectively, from El Reno, Okla., to Guthrie, Okla., and from Guthrie through Weleetka, Okla., to Fort Smith, Ark. Excepting certain shipments hereinafter noted, complainants' and intervener's claims cover approximately 7,591 bales of cotton, aggregating 3,736,685 pounds, which originated at various points on the lines of the defendant carriers, were compressed at Weleetka, and reshipped to New Orleans, La., San Francisco and Oakland, Calif., Seattle, Wash., and Galveston and Houston, Tex., principally for export. The weights of these shipments and the names of the respective shippers are as follows: W. D. Felder & Company, 1,495,970 pounds; Anderson, Clayton & Company, 25,629 pounds; R. H. Hooper & Company, 733,205 pounds; and Southern Products Company, 1,481,881 pounds.

The defendant carriers' tariffs authorized compression and concentration services at Weleetka, while tariffs of Agents Leland and Countiss, which named the rates, contained the usual provisions that shipments moving under the rates provided therein are entitled to the privileges and subject to the additional charges authorized by the tariffs of the individual participating carriers. Leland's tariff named different bases of rates, dependent upon whether the cotton was compressed or uncompressed during the entire movement, or whether it was received by the carrier at point of origin in uncompressed bales and compressed in transit by and at the expense of the carriers. The entire movement here in question was under the rate basis last described. Each of the agency tariffs also carried a restriction that the compress charge "shall not exceed 10 cents," while Leland's tariff further provided that when exceeding that sum "the excess will be in addition to the through rates." As a result of the tariff provisions complainants, and in the case of Hooper & Day, their predecessors in interest, paid the compress companies 5 cents per 100 pounds on each of these shipments.

The complaint also includes 95 bales, aggregating 45,869 pounds, compressed at Oklahoma City, Okla., for the Chickasha Cotton Oil Company, and reshipped to New Orleans; also 90 bales, aggregating 43,978 pounds, compressed at Guthrie, Okla., for Anderson, Clayton & Company, and reshipped to Houston. The defendant carriers'

tariffs did not authorize compression either at Guthrie or Oklahoma City. While the record suggests that at least some of those shipments moved to the compress point at those stations in connection with other carriers, the routes of movement are not established. From the facts disclosed we are unable to determine what charges were applicable to such shipments, and they will not be further considered. There is also excluded from consideration 75 additional bales, included in complainants' exhibits, compressed at Weleetka, but as to which it appears that a 15-cent compress charge was absorbed by the carriers.

In the spring of 1918 the compress companies notified the carriers and shippers that, effective September 1, 1918, their compress charges would be increased to 15 cents, and in conjunction with the shippers made efforts to induce the carriers to amend their tariffs to provide for the absorption of that charge out of the through rate. This increase was made effective according to announcement, but the War Industries Board having entered into an investigation of the reasonableness of the increased charge, the carriers took no action in the matter pending its ruling. The board approved the increased charge about November 1, 1918. Shortly thereafter the tariffs of all lines participating in the movement of cotton were amended to provide for the absorption of the entire 15-cent charge. Such absorption was made contingent upon a minimum loading of 75 bales per car, though this requirement was later eliminated. On traffic originating on the defendant carriers' lines, these changes became effective February 17, 1919, with respect to Pacific coast destinations, and January 21, 1919, with respect to other destinations. Demands were thereupon made upon the carriers generally for the retroactive absorption of the additional 5-cent compress charge to September 1, 1918. The railroad administration acceded to these demands to the extent of applying to us for authority to make refund on that basis on shipments originating subsequent to November 1, 1918, at which time, as has been stated, the reasonableness of the increased charge was determined. This application was approved, and similar authority extended to all nonfederally controlled lines. Apparently, readjustments upon the approved basis were made on cotton traffic generally with the exception of the shipments involved in this proceeding.

Upon the facts shown it appears that the rates have generally included the entire compress charge. The conclusion is warranted that the rates are in reality based on the inclusion of a reasonable charge for that service.

We find that due to the defendants' failure to provide for the absorption out of the through rates of the entire 15-cent compress

charge on shipments which moved from initial shipping points on the lines of the defendant carriers subsequent to November 1, 1918, and which were compressed at Weleetka, complainants, W. D. Felder & Company, Anderson, Clayton & Company, and Hooper & Day, successor to R. H. Hooper & Company, and Southern Products Company, intervener, have been subjected to the payment of charges which were in the aggregate unjust and unreasonable; that they have been damaged on such shipments to the extent of 5 cents per 100 pounds; and that they are entitled to reparation, with interest. While complainants and intervener, with certain exceptions, have shown the dates of movement from Weleetka, the record does not disclose the dates of the initial movement from points on the defendant carriers' lines, and upon this record the exact amount of reparation due can not be determined. Complainants above named and intervener should comply with Rule V of the Rules of Practice.

68 I. O. C.

No. 11972.

M. L. DAVIS AND W. D. DAVIS

v.

GULF, COLORADO & SANTA FE RAILWAY COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted October 6, 1921. Decided March 24, 1922.

Rates on beef cattle, in carloads, from Wilson, Okla., to Fort Worth, Tex., found unreasonable. Reparation awarded.

S. C. Rowe for complainants.

F. J. Wren for Gulf, Colorado & Santa Fe Railway Company and director general as agent.

K. H. Schoppe for Oklahoma, New Mexico & Pacific Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

By Division 3:

No exceptions were filed to the report proposed by the examiner.

Complainants, a partnership engaged in the cattle business, allege that the rate of 32 cents charged on 24 carloads of beef cattle shipped from Wilson, Okla., to Fort Worth, Tex., from July 16 to November 4, 1917, and the rate of 34.5 cents charged on 20 carloads of beef cattle shipped from and to the same points from July 13 to August 26, 1918, were unreasonable to the extent that they exceeded a rate of 22.5 cents established on March 31, 1919. The prayer is for reparation only. Rates are stated in cents per 100 pounds.

The shipments moved to Ardmore, Okla., over the Oklahoma, New Mexico & Pacific, thence to destination over the Gulf, Colorado & Santa Fe, 124 miles. The applicable joint class-B rates were charged. When the 24 cars moved at the joint rate of 32 cents, the rate on beef cattle applicable to interstate shipments from Wilson to Ardmore was 6.5 cents, and the rate from Ardmore to Fort Worth was 12.75 cents, aggregating 19.25 cents; and when the 20 cars moved at the joint rate of 34.5 cents the intermediate rates were 8 cents and 16 cents, respectively, aggregating 24 cents.

As to the 24 cars, moving prior to Federal control, the carriers admitted at the hearing that the rate charged was unreasonable to

the extent that it exceeded 22.5 cents. As to the 20 cars moving during Federal control, the Director General of Railroads pointed out the aggregate of intermediates, and expressed a willingness to make reparation to that basis. Between the times of movement of the two groups of cars the increases in rates under General Order No. 28 of the director general took place. The Oklahoma, New Mexico & Pacific was not under Federal control when these shipments moved.

We have repeatedly held that a joint rate in excess of the aggregate of the intermediate rates subject to the interstate commerce act is *prima facie* unreasonable.

We find that the rate of 32 cents assailed was unreasonable to the extent that it exceeded 19.25 cents; that the rate of 34.5 cents assailed was unreasonable to the extent that it exceeded 24 cents; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges collected and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice.

68 I. C. C.

No. 12020.

MONITOR STOVE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CANADIAN PACIFIC
RAILWAY COMPANY, ET AL.

Submitted October 17, 1921. Decided March 24, 1922.

Rate applied on carload shipments of cast-iron furnaces with sheet-metal casings and caps, from Cincinnati, Ohio, to Pacific coast points, from October 23, 1918, to October 8, 1919, found applicable and not unreasonable or unjustly discriminatory. Complaint dismissed.

D. P. Eggenberger for complainant.

Thomas M. Woodward for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation, engaged at Cincinnati, Ohio, in the manufacture of pipeless furnaces, alleges that the rates charged by defendants on carload shipments of its product from Cincinnati to San Francisco, Calif., Portland, Oreg., and Seattle, Tacoma, and Spokane, Wash., during the period from October 23, 1918, to October 8, 1919, were unreasonable and unjustly discriminatory in violation of sections 1 and 2 of the interstate commerce act and section 10 of the Federal control act. The prayer is for reparation only. Rates will be stated in cents per 100 pounds.

The furnaces comprising the shipments were made of cast iron, except the casings and caps, which were of sheet iron. They were shipped knocked down and the parts were crated. The weights of the shipments varied; those in 36-foot cars averaged 27,250 pounds and those in 50-foot cars 44,800 pounds.

The tariffs in effect during the period of movement provided commodity rates of \$2.25, minimum 24,000 pounds, from Cincinnati to San Francisco, Portland, Seattle, and Tacoma, and \$1.90, minimum 24,000 pounds, to Spokane on "furnaces, air or steam," and these were the rates applicable, and generally collected on the shipments.

The same tariffs provided a rate of \$1.625, minimum 40,000 pounds, from Cincinnati to all of the above points on "cast-iron furnaces, k. d." Complainant contends that the latter rate was applicable to the shipments, but in view of the fact that its furnaces comprised as an integral and necessary part sheet-iron casings, we can not agree with this contention.

On December 31, 1919, the tariffs were amended, making the \$1.625 rate applicable to cast-iron furnaces with sheet-iron or steel casings, and complainant asks reparation to the basis of that rate.

Defendants testified that the rate of \$1.625 was established on cast-iron furnaces to meet competition through the Panama Canal; that the competition was not so keen in the case of furnaces with sheet-metal parts, and that the \$1.625 rate was not originally made applicable to this class of furnaces for that reason. Defendants also show that the car-mile earnings of 32.7 cents on the shipments under consideration were generally lower than the contemporaneous car-mile earnings between the same points on machinery and on iron articles such as bars, rods, pipe, rail ties, rail fastenings, and boiler tubes; and that furnaces made entirely of cast iron load heavier than the furnaces here under consideration.

It will be unnecessary to discuss the question raised in connection with the correct charges under the \$1.625 rate in instances where a large car was ordered and defendants for their own convenience furnished two smaller cars.

We find that the rate of \$2.25 was applicable to the shipments here considered, and that this rate was not unreasonable or unjustly discriminatory.

An order dismissing the complaint will be entered.

68 I. C. C.

No. 12206.

WISCONSIN DAIRY PRODUCTS COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,
AND DIRECTOR GENERAL, AS AGENT.

Submitted October 14, 1921. Decided March 24, 1922.

Rates charged on tin cans, in carloads, from Cragin, Ill., to Stoughton, Wis., found in excess of those applicable. In certain instances the rate applicable found unreasonable. Reparation awarded.

Paul E. Blanchard for complainant.

John F. Finerty for director general, as agent.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing milk products at Stoughton, Wis., alleges that the rates charged on tin cans, in carloads, shipped between January 1, 1919, and the date of hearing, from Cragin, Ill., to Stoughton were unreasonable. The prayer is for reparation and the establishment of reasonable rates for the future. Rates will be stated in cents per 100 pounds.

The shipments moved over the Chicago, Milwaukee & St. Paul, 124 miles. While there appear to have been numerous instances of undercharges, charges generally were collected at the fourth-class rate of 22 cents prior to August 26, 1920, and 33.5 cents thereafter. Prior to August 26, 1920, a commodity rate of 20 cents to Darwin, Wis., 20.6 miles beyond Stoughton, was applicable to the latter point. On August 26, 1920, the 20-cent rate was increased 40 per cent to 28 cents, in alleged compliance with *Increased Rates, 1920*, 58 I. C. C., 220. In *Authority to Increase Rates*, 58 I. C. C., 302, we expressly stated that the percentage of increase to be applied to freight rates between points in Illinois and in western territory was 35 per cent, and not 40 per cent. Accordingly, on November 25, 1920, the rate to Darwin was reduced to 27 cents. On August 20, 1921, a specific commodity rate of 27 cents to Stoughton was published.

Complainant's allegation of unreasonableness is based on the contention that the rates to Stoughton should not have exceeded those to Darwin, but the Darwin rates were applicable to Stoughton, and the shipments were accordingly overcharged.

Defendants appeared at the hearing, but offered no defense.

We find that the applicable rates were not unreasonable, except that the rate of 28 cents charged and collected from August 26, 1920, to November 25, 1920, was unreasonable to the extent that it exceeded 27 cents; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those herein found reasonable; and that it is entitled to reparation, with interest. Complainant should file a statement in accordance with Rule V of the Rules of Practice. In this statement any outstanding overcharges or undercharges should be considered.

68 I. C. C.

No. 12372.

WILLIAM L. CARNEY

v.

DIRECTOR GENERAL, AS AGENT, MINNEAPOLIS, ST.
PAUL & SAULT STE. MARIE RAILWAY COMPANY,
ET AL.

Submitted October 7, 1921. Decided March 24, 1922.

Charges collected on two carloads of ice from Trevor, Wis., and Lake Marie (Antioch), Ill., to points in Chicago, Ill., on the Illinois Northern Railway found to have been in excess of those legally applicable.

William L. Carney for complainant, in person.

A. H. Lossow for Minneapolis, St. Paul & Sault Ste. Marie Railway Company and director general, as agent.

John F. Finerty and *Royal McKenna* for director general, as agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant alleges by complaint filed February 21, 1921, that the charges collected on about 1,800 carloads of ice shipped during the statutory period from Trevor, Wis., and Lake Marie (Antioch), Ill., to the California Ice & Coal Company, Oetting Brothers, and Bushing Ice Company, dealers in ice at Chicago, Ill., were unreasonable and illegal. We are asked to award reparation to the consignees above named. At the hearing complainant limited the issue to the legality of the charges collected on two shipments described in the complaint, one that moved in October, 1917, from Trevor, and one that moved in June, 1918, from Lake Marie, with which shipments only this report will deal.

The shipments moved over the Minneapolis, St. Paul & Sault Ste. Marie, hereinafter called the Soo Line, to Chicago, and were switched by the Illinois Northern to the industrial tracks of Oetting Brothers and the California Ice & Coal Company. The shipment from Trevor weighed 55,200 pounds. Charges of \$16.56 were collected thereon at a commodity rate of 3 cents per 100 pounds. The shipment from Lake Marie weighed 57,100 pounds, on which charges of \$22.84 were col-

lected at a commodity rate of 4 cents per 100 pounds. The rates charged were named in the Soo Line tariff as applying from the points of origin to Chicago, but complainant contends that the tariff naming these rates provided lower through charges to destinations on the Illinois Northern, where there is no intermediate movement over the Chicago Junction Railway, by the following provision, headed "Application of Rates":

When the total freight charges to Chicago amount to \$15.00 or more per car, * * * the arbitraries named on page 3, referred to by Rule numbers shown below, added to the rates named in tariff, as amended, to Chicago, less the amount stated that will be absorbed by the M., St. P. & S. Ste. M. Ry., will constitute through rates from points of origin to destinations on connecting lines within the Chicago Switching District having facilities designated as "Industries" or "Team Tracks" available to the M., St. P. & S. Ste. M. Ry. * * *

The arbitraries referred to provided the following amounts for direct deliveries by the Illinois Northern on cars weighing 60,000 pounds or less: To industries, \$3.50 per car; to team tracks, \$4.50 per car. Six dollars per car is the amount stated that the Soo Line would absorb, and the amount which the tariff directs to be deducted from the sum of the rate and arbitrary to obtain the through rate. While the intention of the Soo Line, as urged by counsel on brief and on exceptions, may have been to absorb only the switching charges of the Illinois Northern subject to a maximum of \$6 per car, that intention is not expressed in the tariff. Tariffs are to be construed according to their language, and the intention of the framers is not controlling. *Boldt Co. v. P., C., C. & St. L. Ry. Co.*, 42 I. C. C., 308. Stripped of technical phraseology the tariff provides that when the freight charges under the rate named to Chicago amount to \$15 or more per car, an arbitrary of \$3.50 for industrial, and \$4.50 for team-track deliveries for a direct switching movement by the Illinois Northern, will be added to the freight charge, and from that amount there will be deducted \$6 per car, the remainder constituting the through rate from point of origin to final destination.

We find that the charges collected on the shipments under consideration were illegal to the extent that they exceeded \$14.06 on the shipment from Trevor and \$20.34 on the shipment from Lake Marie. The receipted expense bills filed of record show Oetting Brothers as consignor and consignee of the shipment from Trevor, and the California Ice & Coal Company as consignor and consignee of the shipment from Lake Marie. The defendants will be expected to refund the overcharges, with interest, to the respective shippers entitled thereto.

The complaint will be dismissed.

No. 12384.
TUTWILER & BROOKS
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted September 26, 1920. Decided March 20, 1922.

Shipments of pig iron, in carloads, from North Birmingham, Ala., to New Orleans, La., for export, found overcharged. Reparation awarded.

W. B. Lewis for complainant.

H. L. Walker for Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner. Our conclusions differ from those suggested by him.

Complainants are Herbert Tutwiler and H. M. Brooks, copartners in the wholesale coal and iron business at Birmingham, Ala., under the firm name of Tutwiler & Brooks. They allege that the charges collected on 24 carloads of pig iron shipped on May 6, 8, and 9, 1920, from North Birmingham, Ala., to New Orleans, La., for export, were illegal and unreasonable, and ask us to award reparation. Rates will be stated in amounts per long ton.

The shipments, aggregating 850 long tons, moved as routed over the Southern to Birmingham, the Birmingham Southern to Bessemer, Ala., and the Southern system beyond. Charges were collected at a combination rate of \$2.10, composed of commodity rates of 30 cents to Birmingham and \$1.80 beyond. Complainants contend that the \$1.80 rate was applicable from North Birmingham, a Birmingham group point.

Prior to February 29, 1920, the rates on pig iron from Birmingham group points to New Orleans were \$1.80 for export, \$3.30 for local deliveries. By a tariff supplement effective on that date the \$1.80 rate was restricted to apply only over certain listed lines parties to the tariff and not under Federal control, among which was the Birmingham Southern, or jointly over those lines and lines under Federal control. On May 10, 1920, the \$1.80 rate was canceled, thereby making the \$3.30 rate effective over all lines. Com-

plainants routed the shipments in the manner indicated to obtain the benefit of the \$1.80 rate.

The witness for the Southern conceded that the \$1.80 rate would have been applicable except for the following restriction contained in the original tariff, which, he contends, prohibited participation by the Birmingham Southern as an intermediate carrier:

Rates in Connection with the Birmingham Southern R. R.

Rates published herein via the Birmingham Southern R. R. do not apply via A. B. & A. R. R. to or from Bessemer, Ala., or Southern R. R. between Bessemer, Ensley, Thomas and Woodward, Ala., and Alabama City, Anniston, Attala, East Birmingham, Gadsden, North Birmingham, Rock Run, Round Mountain, Talladega, Ala., or Tallapoosa, Ga.

A witness for the Birmingham Southern testified that this provision was incorporated in the tariff at his suggestion for the purpose of prohibiting a division in the rates between the Birmingham Southern and the Southern on short-haul traffic moving between Bessemer, Ensley, Thomas, and Woodward on the one hand and Alabama City and the other points named on the other; and that there was nothing in this provision which prohibited the use of the Birmingham Southern as an intermediate carrier on these shipments, although such use of that carrier was not contemplated.

We are of the opinion that the above provision, in so far as it related to the Southern, only prohibited participation of the Birmingham Southern in a movement from a specified station to a specified station named in the item; and that it did not prohibit that carrier from participating in a movement from one of these points *through* another of these points to a destination not named therein, as is urged on behalf of the Southern.

We find that the rate applicable on complainants' shipments was \$1.80. We further find that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found to have been applicable; and that they are entitled to reparation in the sum of \$255, with interest.

An order awarding reparation will be entered.

68 I. C. C.

No. 12491.
KOHAN & FALK COMPANY
v.
OREGON SHORT LINE RAILROAD COMPANY ET AL.

Submitted October 25, 1921. Decided March 24, 1922.

Held on a carload of scrap iron from Burmah, Idaho, to Seattle, Wash., found not unreasonable or otherwise unlawful. Complaint dismissed.

***Emuel J. Forman* for complainant.**

***W. A. Robbins* for defendants.**

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants, copartners engaged in the junk business at Seattle, Wash., allege that the rate charged on a carload of scrap iron shipped November 17, 1917, from Burmah, Idaho, to Seattle, Wash., was unreasonable, unduly prejudicial, and in violation of the fourth section of the act. We are asked to award reparation. Rates will be stated in cents per 100 pounds and are those in effect when the shipment moved.

The shipment originated at Burmah, a nonagency station on a branch line of the Oregon Short Line, and was billed from Richfield, Idaho, the junction of that line with another branch line of the same carrier. It moved over the defendants' lines to Seattle, 804 miles. The applicable class-D rate of 49 cents was charged. Complainants contend that a reasonable rate should not have exceeded 38 cents, giving as the basis therefor the local class-D rate of 4 cents from Richfield to Shoshone, Idaho, and 34 cents from Shoshone to Seattle, this latter rate being in effect from Barratt's, Mont., a more distant point. This fourth section departure was authorized by appropriate fourth section order. The class-D rate from Burmah to Shoshone was 6 cents, and the rate applicable on scrap iron from Shoshone to Seattle was the class-D rate of 46 cents. The 34-cent rate from Barratt's was 4 cents over the rate in effect from Butte, Mont., and was established to meet the competition of three other lines having shorter routes from Butte to Seattle. The short-line

mileage between the latter points is 656 miles, while the defendants' route is 1,156 miles.

The rate charged is compared with a commodity rate of 40 cents that was in effect from Gooding, Jerome, and Milner, Idaho, to Seattle, 771, 784, and 870 miles, respectively. Class D is the general basis for rates on scrap iron, in carloads, from points on defendants' lines to Seattle, and the commodity rate from the points named was established because of a substantial movement of scrap iron from those points, resulting from the abandonment and junking of the Idaho Southern Railway. The shipment in question is apparently the only one that has been made from Burmah.

Rates and minimum weights applicable on other commodities between Burmah and Seattle were: Canned goods, 60 cents, minimum 50,000 pounds; canned goods, 75 cents, minimum 40,000 pounds; junk, 58 cents, minimum 30,000 pounds; cement, 58 cents, minimum 40,000 pounds; agricultural implements, 93 cents, minimum 24,000 pounds. The rate on bags and bagging from Seattle to Burmah was 73 cents, minimum weight 40,000 pounds. The minimum weight applicable in connection with the class-D rate charged was 50,000 pounds. It is not claimed that the class-D rate, as such, was unreasonable or that the classification rating was improper.

We find that the rate charged was not unreasonable, or otherwise unlawful. The complaint will be dismissed.

68 I. C. C.

No. 12518.

DULUTH BREWING & MALTING COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted October 10, 1921. Decided March 24, 1922.

Rate on beer, in carloads, from Duluth, Minn., to East Dubuque and Fulton, Ill., found not unreasonable or unduly prejudicial. Complaint dismissed.

F. H. Trelford and R. L. Fleming for complainant.

B. W. Scandrett for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing beer at Duluth, Minn., by complaint filed February 28, 1921, alleges that the rate charged on 42 carloads of beer shipped between July 3, 1916, and April 9, 1918, from Duluth to East Dubuque and Fulton, Ill., was unreasonable and unduly prejudicial. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments moved from Duluth over either the Great Northern or Northern Pacific to St. Paul or Minnesota Transfer, Minn., thence over the Chicago, Burlington & Quincy to East Dubuque, 397 miles, and to Fulton, 454 miles. Charges were collected at the applicable fifth-class rate of 22 cents. Complainant alleges that this rate was unreasonable and unduly prejudicial to the extent that it exceeded a commodity rate of 19 cents applicable in the opposite direction over the same lines from Chicago Ill., to Duluth, 580 miles. The latter rate was increased to 24 and 32.5 cents, successively, under authorized increases. On September 7, 1919, a commodity rate of 24 cents was established from Duluth to these destinations, the same as the commodity rate then in effect from Chicago to Duluth; and the minimum weight was increased from 20,000 pounds for straight carloads of beer in wood, and 28,000 pounds for straight carloads in glass, packed in barrels or boxes, and for mixed carloads in wood and in

glass, applicable in connection with the fifth-class rate, to 30,000 pounds. The present commodity rate from Duluth is 32.5 cents.

Beer, in carloads, has generally been handled at fifth-class rates in western territory, except only in a few instances where lower commodity rates have been established from points originating a heavy tonnage of the traffic, notably Chicago and Milwaukee, Wis. The volume of the movement northbound from Chicago has been greatly in excess of the southbound movement from Duluth.

The rate-making mileage from Chicago to Duluth is 470 miles, and the class rates between those points reflect the competition of several rail lines and also water competition. During the period between October, 1916, and April, 1918, the fifth-class rate for intrastate application for 400 miles was 27.9 cents in Minnesota and 25 cents in Iowa, and for 455 miles, 30.3 cents in Minnesota and 28 cents in Iowa.

We find that the rate assailed was not unreasonable or unduly prejudicial. The complaint will be dismissed.

68 L. C. C.

No. 12526.

STANDARD RAIL & STEEL COMPANY

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY, AND DIRECTOR GENERAL, AS AGENT.

Submitted November 21, 1921. Decided March 25, 1922.

Rate on scrap iron, in carloads, from Silvis to Moline, Ill., during Federal control, found unreasonable. Reparation awarded.

W. C. Ropiequet and R. W. Ropiequet for complainant.

A. B. Enoch for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner. Our conclusions differ from those proposed by him.

Complainant is a corporation dealing in scrap iron and steel at St. Louis, Mo. By complaint filed February 19, 1921, it alleges that the rate of 6.5 cents charged on three carloads of scrap iron shipped on June 26 and 27, 1919, from Silvis, Ill., to Moline, Ill., was unreasonable. We are asked to award reparation to the basis of the subsequently established rate of 2.5 cents. The complaint also contains an allegation that the rate assailed was in violation of the fourth section of the interstate commerce act, but this was conceded by complainant to have been made in error. Rates will be stated in cents per 100 pounds, except as otherwise indicated.

The shipments weighed 265,400 pounds. Charges of \$172.51 were collected at the ninth-class rate under Illinois classification of 6.5 cents.

On June 24, 1918, the ninth-class rate from Silvis to Moline was 3.7 cents. Under General Order No. 28 of the Director General of Railroads this rate would have become 4.5 cents on June 25, 1918, except for the minimum class scale prescribed in that order, under which it became 6.5 cents. On May 20, 1919, a dealer in scrap iron at Chicago asked that a commodity rate be published from Silvis to Moline. In response to that application a rate of 2.5 cents was approved by the Chicago western district freight traffic committee. The director of traffic for the railroad administration at first objected to

the publication of this rate because it was lower than the rate in effect prior to June 25, 1918, but it was finally published, effective December 20, 1919, subject to a minimum weight of 50,000 pounds and a minimum revenue of \$15 per car.

The movement over the Chicago, Rock Island & Pacific from Silvis to Moline, 5.5 miles, although treated as a line haul, is in the nature of a switching movement, the switch engine which operates in the Silvis yards picking up the traffic and bringing it into Moline. The rate assailed yielded an average return of \$57.50 per car, or \$10.45 per car-mile. Under the 2.5-cent rate complainant's shipments would have earned \$22.11 per car, or \$4.02 per car-mile. This rate compares favorably with rates of 1.5 and 2.5 cents contemporaneously applicable for hauls of from 1.5 to 7.5 miles between East Moline, Moline, and Rock Island, Ill., and Davenport, Iowa, all in the immediate vicinity of Silvis.

Numerous intrastate rates of 80 and 90 cents per long ton, equivalent to 3.57 cents and 4 cents per 100 pounds, contemporaneously in effect on scrap iron, for hauls of 4 to 9 miles, were referred to by defendants to show that the subsequently established rate was subnormal. Examination of the tariffs from which these rates were quoted shows that similar rates applied for hauls of much greater distances, in some instances 50 to 60 miles. The only other comparisons submitted by defendants were rates of 3.5 cents on building stone from Silvis to Moline, and 4 cents on brick from East Moline to Moline.

We find that the rate assailed was unreasonable to the extent that it exceeded 2.5 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$106.16, with interest.

An appropriate order will be entered.

ES I. C. C.

No. 12532.
FAIRMONT CREAMERY COMPANY
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY.

Submitted November 28, 1921. Decided March 25, 1922.

Rate charged on cream in carloads from Concordia, Kans., to Crete, Nebr.,
found unreasonable. Reparation awarded.

M. S. Hartman for complainant.

William Tanzer for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing butter, with principal office at Omaha, Nebr., alleges that the rate charged on cream, in carloads, shipped from Concordia, Kans., to Crete, Nebr., between March 1, 1920, and May 27, 1920, was unreasonable. The prayer is for reparation. Rates will be stated per can not exceeding 10 gallons in capacity.

Complainant has a concentration plant at Concordia where it gathers small consignments of cream from local stations on the Missouri Pacific, Atchison, Topeka & Santa Fe, and Union Pacific, and forwards the same in carload lots over defendant's line to Crete. Prior to March 1, 1920, defendant maintained a proportional rate of 25 cents from Concordia to Crete on single consignments of not less than 150 cans between April 1 and September 30, inclusive, and not less than 100 cans between October 1 and March 31, inclusive. This rate was canceled, and from March 1, 1920 to May 26, 1920, inclusive, the only rates applicable were any-quantity distance rates. From Concordia to Crete is 123 miles, and the any-quantity rate for distances from 116 to 130 miles was 40 cents. On May 27, 1920, defendant established a proportional rate of 25 cents from Concordia to Crete on single consignments of not less than 200 cans, and provided that the gross charge for single consignments of a less number of cans should not exceed the gross charge for 200 cans. The

tariffs publishing the rates referred to provide charges for refrigeration when furnished by the carrier and for the free return of empty cans.

Between March 1 and May 26, 1920, inclusive, complainant shipped 74 consignments of cream from Concordia to Crete, on which the any-quantity rate of 40 cents was assessed. The largest consignment was 512 cans and the smallest 126. They averaged about 267 cans. The cans were loaded by the shipper and unloaded by the consignees. Complainant asks for reparation to the basis of the rate which became effective May 27, 1920. No evidence was offered by defendant, which admitted in its answer that the rate charged was unreasonable to the extent that it exceeded the subsequently established rate.

We find that the rate assailed was unreasonable to the extent that it exceeded 25 cents per can, minimum 200 cans in one consignment; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation with interest. Complainants should comply with Rule V of the Rules of Practice.

68 I. C. C.

No. 12567.

MAGNOLIA PETROLEUM COMPANY

v.

DIRECTOR GENERAL, AS AGENT, NEW ORLEANS &
NORTHEASTERN RAILROAD COMPANY, ET AL.

Submitted November 30, 1921. Decided March 20, 1922.

Rate on gravel, in carloads, from Hattiesburg, Miss., to Beaumont, Tex.,
found unreasonable. Reparation awarded.

W. H. Francis and E. L. Wilkerson for complainant.

W. B. Knight and J. H. Tallichet for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a joint-stock association, refines petroleum, at Beaumont, Tex. By complaint filed February 28, 1921, it alleges that the rate charged on seven carloads of gravel shipped from Hattiesburg, Miss., to Beaumont in February, 1920, was unreasonable and in violation of section 4 of the act to regulate commerce. Reparation only is sought.

The shipments moved over the New Orleans & Northeastern to New Orleans, La., and the Southern Pacific lines to Beaumont. Charges were collected at the applicable joint class-E rate of 49 cents per 100 pounds. A combination commodity rate equivalent to 14½ cents per 100 pounds, composed of rates of \$1.10 per cubic yard of 3,000 pounds to New Orleans, and 11 cents per 100 pounds beyond, was contemporaneously in effect from Hattiesburg to Beaumont over the route of movement. A joint rate on that basis was maintained by defendants from Hattiesburg through Beaumont to Port Arthur, Tex., and on May 15, 1920, was established to Beaumont. Complainant asks reparation to that basis.

Defendants admit that the rate charged was unreasonable to the extent that it exceeded the aggregate of the intermediate rates.

We find that the rate charged was unreasonable to the extent that it exceeded \$1.10 per cubic yard of 3,000 pounds, plus 11 cents per 100 pounds; that complainant made the shipments as described and

paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.



No. 12588.

GENERAL PORCELAIN COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO
RAILROAD COMPANY, ET AL.

Submitted October 19, 1921. Decided March 24, 1922.

Interstate rates on glass sand from Hancock, W. Va., to Parkersburg, W. Va.,
found not unreasonable or unjustly discriminatory.

William Beard for complainant.

Charles R. Webber for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in manufacturing porcelain insulators at Parkersburg, W. Va., attacks the rates charged on various interstate carload shipments of glass sand from Hancock, W. Va., to Parkersburg as unreasonable and unjustly discriminatory, and also in violation of the long-and-short-haul provision of section 4 of the act. Reparation on shipments made since December 8, 1919, and reasonable rates for the future are sought. Rates will be stated in amounts per net ton.

The allegation of unreasonableness is based primarily on the fact that for several years the rate to Parkersburg was lower than to East Liverpool, Ohio, a point on the Pennsylvania approximately 150 miles north of Parkersburg, whereas since October 23, 1916, this situation has been reversed and the rates to Parkersburg have been

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higher than to East Liverpool. Traffic from Hancock to East Liverpool moves through Pittsburgh, Pa., and not through Parkersburg. The distance from Hancock to East Liverpool is approximately 250 miles, and to Parkersburg 260 miles.

The following shows the history of the rates from Hancock to Parkersburg and East Liverpool from January 3, 1913:

Effective date.	Parkersburg.	East Liverpool.
January 3, 1913.....	\$1.40	\$1.65
April 1, 1913.....	1.40	1.80
February 23, 1915.....	1.48	1.90
October 7, 1915.....	1.48	1.80
October 24, 1916.....	1.48	1.32
April 26, 1918.....	1.70	1.50
June 25, 1918.....	1.90	1.70
December 8, 1919.....	1.90	¹ 2.50
August 25, 1920.....	2.70	¹ 3.50
January 10, 1921.....	2.70	2.40

¹ Said by defendants to have been published in error. Rate should have been \$1.70 prior to August 26, 1920, and \$2.40 subsequent thereto.

Aside from the general rate history, complainant cites only a rate of \$2.70 to Marietta, Ohio, 14 miles beyond Parkersburg, and a rate of \$2.40 to West Union, W. Va., 53 miles east of Parkersburg.

Defendants contend that the rate to East Liverpool is forced by the rate maintained by the Pennsylvania from the Mapleton district in Pennsylvania, the farthest distant point in that district being 216 miles from East Liverpool, as compared with 256 miles from Berkeley Springs, W. Va., a station 6 miles beyond Hancock, and the farthest distant point in the Hancock district. It is contended that the reduction to East Liverpool in 1916 was made solely for the purpose of permitting the sand producers in the Hancock district to compete at that point with the Mapleton producers.

Rates are shown from Berkeley Springs in the Hancock district and from McVeytown in the Mapleton district to five points in Ohio, as follows:

To—	From Berkeley Springs.		From McVeytown.	
	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>		<i>Miles.</i>	
Columbus, Ohio.....	397	\$3.10	363	\$3.10
Zanesville, Ohio.....	338	2.70	324	2.70
Cambridge, Ohio.....	312	2.70	306	2.70
Newark, Ohio.....	364	3.10	330	3.10
Mount Vernon, Ohio.....	389	3.10	359	4.10

These rates average \$3.04 and produce an average ton-mile revenue of 8.7 mills for an average distance of 348 miles. For the distance from Hancock to Parkersburg, 260 miles, the present rate of \$2.70 yields 10 mills per ton-mile.

In *American Window Glass Co. v. W. M. Ry. Co.*, 51 I. C. C., 704, we found that a rate of \$1.70 was reasonable for the transportation of glass sand from Hancock to points just east of Pittsburgh, for an average distance of 200 miles. On August 26, 1920, this rate was increased to \$2.38, yielding 11.9 mills per ton-mile.

While the record is not clear, the testimony of complainant's witness indicates that between December 8, 1919, and August 26, 1920, a rate in excess of \$1.90 was charged on shipments of sand from Hancock to Parkersburg. If this be so, the complainant has been subjected to overcharges which should be promptly adjusted.

We find that the applicable rates have not been and are not unreasonable or unjustly discriminatory. As the rates to East Liverpool did not and do not apply through Parkersburg, no violation of the fourth section existed or exists as to these rates.

The complaint will be dismissed.

68 I. C. C.

No. 12397.

CHEVROLET MOTOR COMPANY OF TEXAS

v.

DIRECTOR GENERAL, AS AGENT, MICHIGAN CENTRAL
RAILROAD COMPANY, ET AL.

Submitted September 26, 1921. Decided March 30, 1922.

Rates charged on automobile wooden floor, toe, and running boards, in mixed carloads, from Detroit, Mich., to Fort Worth, Tex., found unreasonable. Reparation awarded.

Frank A. Gaynor, John Thomas Smith, and C. R. Scharff for complainant.

John F. Finerty, Thomas M. Woodward, L. P. Nash, and Fred W. Heid for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant is a corporation engaged in the automobile business at Fort Worth, Tex. By complaint filed February 21, 1921, as amended, it alleges that the rates charged on automobile wooden floor, toe, and running boards, in mixed carloads, shipped from Detroit, Mich., to Fort Worth between February 21, 1917, and December 29, 1919, both inclusive, were unreasonable and unduly discriminatory. Reparation to the basis of commodity rates contemporaneously applicable on wagon material is sought.

These shipments were similar to those described in *Chevrolet Motor Co. v. Director General*, 62 I. C. C., 175. No distinction between trimmed and untrimmed boards was made in the instant case, but the descriptions given by complainant indicate that both trimmed and untrimmed boards were included in these shipments.

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The ratings and rates in effect during and since the period of movement are as follows:

Period.	Rate per 100 pounds.	Rating (western classification).	Explanation
April 20, 1917, to June 24, 1918.	\$1.162	Fourth class, minimum 30,000 pounds.	Fourth-class rating on running boards applied by analogy to floor and toe boards.
June 25, 1918, to Dec. 29, 1919.	1.455	Fourth class.....	Effective Apr. 1, 1918, class-A rating, minimum 30,000 pounds, on floor boards: Under classification rule, highest rating applied on mixed shipments.
Dec. 30, 1919, to Feb. 28, 1920.	1.20	Class A, minimum 36,000 pounds.	Class-A rating established on floor, toe, and running boards in consolidated classification.
Feb. 29, 1920, to Aug. 25, 1920.	.785	Commodity.....	Rate applicable on wagon material, in the rough, established on floor, toe, and running boards.
Aug. 26, 1920.....	1.045	.....do.....	
Present.....	1.05	.....do.....	

Complainant contends that from a transportation standpoint these boards are similar to wagon material, such as pine bottoms, planks, boards, and wagon wood, not otherwise specified; that rates assessed on automobile boards higher than those on wagon material were unreasonable; and that commodity rates were established because it was realized that the class rates were improper.

In *Chevrolet Motor Co. v. Director General*, *supra*, there was not a subsequent establishment of commodity rates, but otherwise the rate history was the same as in the instant case. We there found with respect to shipments from Detroit to Melrose, Calif., (1) that the fourth-class rates charged on trimmed boards which moved prior to April 1, 1918, were not unreasonable; (2) that the fourth-class rates charged on trimmed boards on and after that date were unreasonable to the extent that they exceeded the contemporaneous class-A rates; and (3) that the fourth-class rates charged on untrimmed boards prior to December 30, 1919, and the class-A rates charged on and after that date were unreasonable to the extent that they exceeded the contemporaneous class-B rates. The class-B rates from Detroit to Fort Worth were 84.8 cents per 100 pounds prior to June 25, 1918, and \$1.06 on and after that date.

No further evidence of the unreasonableness *per se* of the rates charged was offered and the record does not show any reason why rates from Detroit to Fort Worth should be on a lower basis than from Detroit to Melrose. Apparently only 20 cars moved from Detroit to Fort Worth in 34 months.

Defendants' witness testified that there is a substantial movement of various commodities under class rates between Detroit and Fort Worth; that the traffic density in this territory is not as great as in trunk-line and central territories; that traffic to Texas is not comparable to traffic to California, as many rates to the latter territory

are made low to meet water competition; and that the earnings on this traffic are about the same as on other traffic between Detroit and Fort Worth.

Following the case cited and upon this record we find that the rates assailed were not unreasonable or otherwise unlawful prior to April 1, 1918, but that on and after that date they were unreasonable to the extent that the rates charged on trimmed boards exceeded the contemporaneous class-A rates and the rates charged on untrimmed boards exceeded the contemporaneous class-B rates.

We further find that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued upon the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

68 I. C. C.

No. 12619.
AMALGAMATED SUGAR COMPANY
v.
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted December 5, 1921. Decided March 25, 1922.

Rates applicable on limerock, in carloads, from Flux, Utah, to Burley, Paul, and McMillan, Idaho, found unreasonable. Reparation awarded.

David L. Stine and C. A. Boyd for complainant.

John F. Finerty, J. T. Hammond, jr., and John C. Brooke for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a Utah corporation manufacturing beet sugar, by complaint seasonably filed assails as unjust and unreasonable the rates charged on numerous carloads of limerock shipped between August 26 and October 20, 1918, from Flux, Utah, to Burley, Paul, and McMillan, Idaho. It seeks reparation only. Rates will be stated in amounts per net ton.

Flux is on a branch line of the Western Pacific, 37.8 miles west of Salt Lake City, Utah. The shipments, 104 in number, moved over the Western Pacific to Salt Lake City and the Oregon Short Line beyond, 65 to McMillan, 25 to Burley, and 14 to Paul, distant 323.5, 288.4, and 285.8 miles, respectively, from Flux. The applicable rates were the combinations on Ogden, Utah, composed of a commodity rate of 80 cents to Ogden, a commodity rate of \$2.50 from Ogden to Burley and Paul, and a distance commodity rate of \$2.80 from Ogden to McMillan. To the combinations so made an increase of 20 cents was added under authority of General Order No. 28 of the Director General of Railroads, making the total rate to Burley and Paul \$3.50 and to McMillan \$3.80. Many of the shipments to McMillan and all of those to Paul were overcharged; one to McMillan and one to Burley were undercharged.

Limerock is used by complainant in the manufacture of its product. Its factories at these destinations ordinarily obtain their supply of this commodity from producing points in Idaho. On May

17, 1918, in anticipation of the necessity of procuring limerock elsewhere, complainant asked for a commodity rate lower than the existing combinations from Flux to the points named, and on October 20, 1918, subsequent to the movement, a rate of \$2.20 was established upon one day's notice.

Limerock is a low-grade commodity, moves in open-top equipment, loads in excess of 50 tons per car on an average, and is not susceptible to loss or damage in transit.

The following table, compiled from complainant's exhibits, compares the rates in issue and earnings thereunder with the present rates and earnings on the same commodity between points in the same general territory:

Haul.	Distance.	Rate.	Car-mile earnings.	Ton-mile earnings.
	<i>Miles.</i>		<i>Cents.</i>	<i>Mills.</i>
Flux, Utah, to—				
Burley, Idaho.....	285	\$3.50	61.4	12.25
Paul, Idaho.....	283	3.50	61.4	12.37
McMillan, Idaho.....	327.7	3.80	68.1	11.59
Arco, Idaho, to—				
Paul, Idaho.....	160	1.625	50.8	10.15
Burley, Idaho.....	163	1.625	50	10
McMillan, Idaho.....	206	1.875	45.5	9
Garland, Utah.....	215.9	2.00	45.3	9.26
Quinney, Utah.....	214.3	1.875	43.7	8.74
Lewiston, Utah.....	201.3	1.875	46.5	9.31
Ogden, Utah.....	217.2	2.00	46	9.2
Townsend, Utah, to—				
Garland, Utah.....	143.9	1.50	52.8	10.4
Quinney, Utah.....	201	1.90	47.2	8.1
Lewiston, Utah.....	184.7	1.90	51.4	10.8

Both Arco and Townsend are originating points for the shipment of limerock, and sugar factories are located at the destinations named.

Complainant contrasted the rates under consideration and the earnings thereunder with rates and earnings on limerock from producing points in South Dakota, Idaho, and Wyoming to 12 destinations in Nebraska, Idaho, Wyoming, and Colorado at which sugar factories are located, for distances ranging from 64 to 252 miles. The applicable rates in controversy yield ton-mile earnings ranging from 11.59 to 12.37 mills, as compared with earnings of from 6.74 to 12.5 mills under the rates instanced ranging from 80 cents to \$1.70. The average earnings under the latter rates for all distances over 200 miles were 7.45 mills.

The \$3.50 rate from Flux to Burley, yielding ton-mile earnings of 12.25 mills, was also compared with rates ranging from \$2.50 to \$4.40 on slack coal, ore, plaster, and cement from points in Wyoming, Utah, and Idaho to destinations in Montana, Idaho, Utah, and Nevada for distances ranging from 272 to 522 miles. The ton-mile earnings under these rates ranged from 6.09 to 11.4 mills. Par-

ticular reference was made to the movement of slack coal from Rock Springs, Wyo., to Burley, 340 miles, yielding ton-mile earnings of 8.23 mills. Defendants stated that the rates on coal reflect competition with the Utah fields, and that the rates on low-grade ore are also subnormal.

Defendants show that the rates assailed and the earnings thereunder compare favorably with rates and earnings on limerock for similar distances between points in Oregon and Washington. They also compared the rates under consideration with those on coal from the Kemmerer and Rock Springs districts in Wyoming to points in Idaho for comparable distances. The average revenue per ton-mile based on the average rates on all kinds of coal compares favorably with earnings from the rates on limerock here in issue. Many of the destinations instanced are branch-line points in Idaho, and the earnings on coal to Burley, Paul, and McMillan and other stations on the same branch of the Oregon Short Line are typical of all. They range from 10.2 to 11.8 mills per ton-mile.

We find that the applicable rates were unreasonable to the extent that they exceeded \$2.75 per net ton. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$7,402.04, with interest. This amount takes into consideration the outstanding overcharges and undercharges.

An appropriate order will be entered.

68 I. C. C.

No. 12650.

HARDAWAY CONTRACTING COMPANY

v.

GEORGIA SOUTHWESTERN & GULF RAILROAD
COMPANY.

Submitted November 5, 1921. Decided March 30, 1922.

Switching charges collected at Albany, Ga., found illegal. Refund directed and complaint dismissed.

Battle & Arnold for complainant.

R. H. Ferrell for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation constructing dams and power houses for hydroelectric purposes, by complaint filed March 28, 1921, alleges that switching charges assessed on interstate traffic switched to or from its siding located on defendant's line and within defendant's yard limits at Albany, Ga., when defendant or the Seaboard Air Line received a revenue transportation haul, were unjust, unreasonable, and unduly prejudicial. We are asked to award reparation.

During 1919 complainant began the construction of the Porter Shoals power dam on the Flint River in Georgia. At the request of complainant, defendant constructed a sidetrack upon its own right of way at a point approximately 9,900 feet from its local freight station and within the yard limits at Albany, and complainant constructed a spur about 4,000 feet long from the Flint River connecting with this sidetrack.

The first car upon which reparation is asked moved over this track on October 1, 1919. Prior to October 30, 1919, defendant's switching tariff, by item 6, provided that:

The terminals of the G. S. W. & G. R. R. and S. A. L. Ry. at Albany and Cordele, Ga., are used jointly by those lines, and no switching charges will be assessed on traffic switched to or from private or assigned sidings located on the G. S. W. & G. R. R. and S. A. L. Ry. at Cordele and Albany, Ga., on which either of these lines receive a revenue transportation haul.

Item 16 of this tariff is a "list of industries located at Albany, Ga." "This list of firms, warehouses, industries, etc., having private or assigned track facilities at Albany, Ga., is published as information, and for the convenience of Officers and Agents."

A reissue of this tariff, effective October 30, 1919, amended item 6 by adding "within the yard limits" immediately after the second reference to "S. A. L. Ry." and item 16 by adding "Flint River (Porter Shoals Power Dam)." This is the only "Industry" named carrying a note. The note is as follows:

Located beyond yard limits. The Georgia Southwestern & Gulf Railroad will switch traffic between Albany, Ga., and the Flint River (Porter Shoals Power Dam), on the following basis, to-wit:

(a) When received at or forwarded from Albany, Ga., via Georgia Southwestern & Gulf Railroad, two (\$2.00) dollars per car.

(b) When received at or forwarded from Albany, Ga., via other lines five (\$5.00) dollars per car.

(c) When having origin or destination at warehouses, industries and other delivery tracks located within the Albany yard limits, five (\$5.00) dollars per car, and when origin or destination is at warehouses, industries and other delivery tracks located on connecting lines, the cost of switching as published in tariffs lawfully on file with the Interstate Commerce Commission, assessed by connecting lines will be in addition to this rate.

Charges were collected in the amounts stated in this note or in those amounts appropriately increased in accordance with the general increase of 1920.

The services performed by defendant were the delivery and receipt of cars at a point on the siding just far enough off its main-line track not to interfere with traffic moving over that track. Complainant then moved the cars with its own locomotives to Flint River (Porter Shoals Power Dam). Neither tariff authorized the imposition of a charge for the services performed by defendant. It appears that defendant was not under Federal control during the period here considered.

We find that the charges assailed were without tariff authority and illegal. Refund thereof, with interest, should be made promptly.

An order dismissing the complaint will be entered.

No. 12833 (Sub-No. 1).
KALBFLEISCH CORPORATION
v.
CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

Submitted December 12, 1921. Decided March 25, 1922.

Applicable charges on a carload of alum from Chattanooga, Tenn., to Lodi, N. J., found unreasonable. Reparation awarded.

H. L. Derby and John J. Gilroy for complainant.

W. H. Hickman for Central of Georgia Railway Company and Ocean Steamship Company of Savannah.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By Division 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation manufacturing sulphate of alumina (alum) at Chattanooga, Tenn. By complaint filed April 12, 1921, as amended, it alleges that the rate of 55.8 cents per 100 pounds charged on a carload of alum shipped May 19, 1917, from Chattanooga to Lodi, N. J., was unjust and unreasonable to the extent that it exceeded the commodity rate of \$6.62 per net ton, minimum 70,000 pounds, established August 25, 1917. Reparation only is sought.

The shipment weighed 60,700 pounds, was insured, and moved over the Central of Georgia, the Ocean Steamship Company of Savannah, and the New York, Susquehanna & Western. A joint sixth-class rate of 49 cents per 100 pounds, minimum 40,000 pounds, which included marine insurance, was applicable. An overcharge of \$41.28 is conceded by defendants. The subsequently established commodity rate did not include marine insurance. The rate of insurance was 15 cents for each \$100 of valuation. Complainant is willing to pay this.

Complainant's plant at Chattanooga was built in expectation of commodity rates being established. It was completed and shipments were made prior to the establishment of such rates. Alum is a commodity of low value and generally moves on commodity rates. In order to develop the traffic it was necessary to establish commodity rates from Chattanooga to the principal consuming territory in the East corresponding to commodity rates from other points to the

East. Counsel for the Central of Georgia and the Ocean Steamship Company of Savannah admits that the class rate charged was unjust and unreasonable to the extent that it exceeded the subsequently established commodity rate, and is willing, if the claim be not barred by limitation, that an award of reparation be made.

On behalf of defendants the position is taken that section 206(f) of the transportation act, 1920, providing that the period of Federal control is not to be computed as a part of the periods of limitation in claims for reparation, is unconstitutional. Excluding the period of Federal control, the claim as to this shipment is not barred. *Ryan Fruit Co. v. S. P. Co.*, 60 I. C. C., 733, 736, and cases there cited.

We find that the applicable charges were unreasonable to the extent that they exceeded those that would have accrued at a rate of \$6.62 per net ton, minimum 70,000 pounds, plus 15 cents for each \$100 of valuation of the lading. We further find that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

68 I. C. C.

No. 12342.
WESTERN GRAIN COMPANY
v.
DIRECTOR GENERAL, AS AGENT, LOUISVILLE &
NASHVILLE RAILROAD COMPANY, ET AL.

Submitted January 21, 1922. Decided March 18, 1922.

Rates on import or interstate shipments of blackstrap molasses, in tank-car loads, from New Orleans, La., and Mobile, Ala., to Birmingham, Ala., found unreasonable and unduly prejudicial. Reasonable and nonprejudicial rates prescribed for the future and reparation awarded.

O. L. Bunn for complainant and Sunny South Grain Company, intervener.

C. R. Hillyer for C. U. Snyder & Company, intervener.

Charles J. Rixey and *H. L. Walker* for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

Exceptions were filed by complainant and defendants to the report proposed by the examiner, and the case was orally argued.

Complainant, a corporation, manufactures mixed feeds for live stock at Birmingham, Ala. By complaint filed February 19, 1921, it alleges that the rates on blackstrap molasses, hereinafter referred to as blackstrap, in tank-car loads, from New Orleans, La., and Mobile, Ala., to Birmingham, Ala., were and are unreasonable, unjustly discriminatory, and unduly prejudicial to Birmingham and unduly preferential of Nashville, Tenn., and other named points, and in violation of section 4 of the interstate commerce act. We are asked to prescribe reasonable and nondiscriminatory rates for the future, and to award reparation. The Sunny South Grain Company, which also manufactures mixed feeds at Birmingham, and C. U. Snyder & Company, which imports blackstrap at Mobile, intervened in behalf of complainant. Rates will be stated in cents per 100 pounds.

Blackstrap is the lowest grade of cane molasses and as a desirable traffic has been dwelt upon in former reports. It is chiefly used in the manufacture of mixed feeds. The blackstrap handled from Mobile is imported from Cuba. This is likewise true of the greater

portion of the blackstrap handled from New Orleans, although the domestic commodity is now being offered at that port in considerable quantities. The bulk of the movement is to points where feed mills are located. The value of blackstrap at the Gulf ports during 1919 and 1920 was about 8 cents per gallon and at the time of the hearing about 5 cents per gallon. Complainant obtains grain products for use in making its mixed feeds from points north of the Ohio and west of the Mississippi. Complainant disposes of its product locally at Birmingham and throughout the Southeast, principally at points east and south of Birmingham. During 1920 its output averaged about 1,200 tons per month.

The following table shows the changes in the rates from New Orleans and Mobile on blackstrap of a value of 8 cents a gallon or less to Birmingham and representative points at which active competitors of complainant are located, the average mileage to each representative point being also indicated:

	To Birmingham, Ala. (313 miles).		To Nashville, Tenn. (516 miles).	To Union City, Tenn. (475.5 miles).	To Dyersburg, Tenn. (473 miles).	To Memphis, Tenn. (397 miles).	Cause of change.
	Mo- bile rate.	New Or- leans rate.					
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	
Prior to June, 1918..	18	13	15	13	.....	10	Import blackstrap rates established in August, 1914, and January, 1915, to Birmingham and Union City, and in August, 1915, and January, 1916, to Nashville and Memphis.
June, 1918.....	16.5	16.5	19	16.5	¹ 16.5	12.5	General Order No. 28.
December, 1919.....	27.5	29	.....	.....	.....	.....	Cancellation of import blackstrap rate resulting in application of domestic blackstrap rate from New Orleans and regular molasses rate from Mobile.
February, 1920.....	.....	32.5	22.5	20	² 20	16.5	In the case of Birmingham, increase to the regular molasses rate; in the case of the other points, cancellation of the import rates on blackstrap, leaving domestic rates in effect.
August, 1920.....	34.5	40.5	28	25	25	20.5	<i>Increased Rates, 1920</i> (58 I. C. C. 220).
December, 1920.....	.....	36.5	.....	.....	.....	.....	Reduction to bring New Orleans-Birmingham rate to level of regular molasses rate to Nashville.
February, 1921.....	28	28	.....	.....	.....	.....	Specific blackstrap rate same as contemporaneously maintained to Nashville and published to remove fourth section violation complained of. ³
June, 1921.....	22.5	22.5	22.5	20	20	16.5	Temporary blackstrap rates originally published to expire Sept. 30, 1921, but later extended.

¹ Effective Sept. 5, 1919.

² Effective May 1, 1920, from Mobile.

³ It developed at the hearing, however, that a rate of 25 cents was contemporaneously in effect from the Gulf ports to Clarksville, Tenn., to which Birmingham is intermediate. There are no feed mills at Clarksville, and defendants advise that the rate to that point was established in error. They state that the tariff will be corrected and the fourth section violation removed at the earliest practicable date.

Defendants advise on brief that they are checking in rates on blackstrap from the Gulf ports to southeastern points which they

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expect to publish on the expiration of the above-mentioned temporary rates and that these rates will probably satisfy the complainant.

Prior to June 25, 1918, the rate on blackstrap to Birmingham was 2 cents less than the rate to Nashville, and this relationship was continued until December, 1919, the spread merely being increased 0.5 cent as a result of the increases in the rates under General Order No. 28 of the Director General of Railroads. If the rate to Birmingham had been increased by the same percentages as the rates to the other points, the applicable rates on complainant's shipments would have been the same as the rates to Union City with which Birmingham had previously been on a parity. The wide disparity in the rates to Birmingham and those to the other points from December, 1919, to February, 1921, is a result of the maintenance of specific rates on blackstrap to the other points and the application of higher rates, for the most part, regular molasses rates, on shipments of blackstrap to Birmingham. It is the general practice of carriers to publish special blackstrap rates to points to which there is any considerable movement. The bulk of the blackstrap molasses moves on such rates.

Defendants contend that it was not unreasonable to charge the regular molasses rate on the shipments of blackstrap moving to Birmingham. As sustaining this contention, they cite several cases in which we permitted the carriers to cancel special rates on blackstrap and to apply the regular molasses rate instead, but in those cases blackstrap generally moved on the regular molasses rates in the particular territory involved. Many special rates on blackstrap have since been established from the Gulf ports to points in the Mississippi, Ohio, and Missouri River Valleys, and there are now on file with us such rates from Gulf and south Atlantic ports to a number of mixed-feed producing points in the Southeast. Generally speaking, such rates are on a lower level than those on molasses.

Defendants compared the rates to Birmingham with the regular molasses rates to other southeastern points to which there are no special rates on blackstrap. So considered, the Birmingham rates compared favorably, but no substantial tonnage of blackstrap moved under the other rates.

Defendants referred to rates ranging from 28 to 70.5 cents for comparable distances in effect on petroleum products and other commodities moving in tank cars. The volume of traffic moving under those rates is not shown. Consideration must be given to the transportation risk in handling petroleum products and the relatively high value of the other commodities referred to.

In *Meridian Traffic Bureau v. Director General*, 60 I. C. C., 549, we held that rates of 15 cents prior to August 26, 1920, and 19 cents thereafter, were not unreasonable rates to apply on shipments of blackstrap from New Orleans and Mobile to Meridian, Miss., an average distance of 169 miles. In *Security Mills & Feed Co. v. Director General*, 62 I. C. C., 405, we held that the rates on blackstrap from New Orleans and Mobile to Knoxville, Tenn., an average distance of 558 miles, were unreasonable to the extent that they exceeded 25 cents prior to August 26, 1920, and 31.5 cents thereafter, and unduly prejudicial to the extent that they exceeded the rates to Nashville.

Complainant points out that its competitors pay lower rates on the other ingredients of mixed feed on account of being nearer the sources of supply, and that the only natural advantage which it had to offset this, namely, its proximity to the source of blackstrap supply, has been destroyed by defendants placing Birmingham on a parity with Nashville as to the rates on that commodity, and that as a result it can not control even its local market, over 85 per cent of the mixed-feed business at Birmingham being done by its competitors. It urges on brief that the rates to Birmingham from Mobile and New Orleans, be fixed at 3 cents and 1 cent, respectively, lower than the rates to Memphis, but the record herein indicates that molasses is being shipped in tank steamers from New Orleans to Memphis and that the rate to Memphis is depressed by water competition. Complainant further urges that the rates to Birmingham from Mobile and New Orleans, be made 6.5 and 8.5 cents, respectively, lower than the rates to Nashville, and it suggests that the rates to Union City and Dyersburg be relatively aligned. No basis for such an adjustment is afforded by the record, if, indeed, it could be attempted in this proceeding. It is true that in *Rates to and from Nashville*, 61 I. C. C., 308, we prescribed reasonable maximum class rates from Mobile and New Orleans to Nashville, approximately 40 per cent higher than for distances comparable to the average distance between those ports and Birmingham. That relationship, however, was largely brought about by increases in the class rates to Nashville to a so-called dry-land basis. It does not follow that it would be a proper spread between commodity rates on blackstrap to Birmingham and Nashville. Our holding in *Security Mills & Feed Co. v. Director General*, *supra*, indicated that the present rate of 22.5 cents to Nashville is considerably below a reasonable maximum.

Defendants argue that as the Nashville rate is depressed it is not unreasonable to apply it to Birmingham. They point out that pursuant to our decision in No. 6332, *Wilkes & Co. v. A. G. S. R. R. Co.*, unreported, the St. Louis rate was extended to Nashville. They also

cite *Scully Syrup Co. v. A. G. S. R. R. Co.*, 43 I. C. C., 567, and *Norfolk Feed Milling Co. v. P. R. R. Co.*, 61 I. C. C., 738, to show that we have recognized the low measure of the St. Louis rate and have refused to extend the measure of that rate for application to other territories. In the *Scully case*, *supra*, we held that a spread in the rates on blackstrap of 6 and 8 cents between St. Louis on the one hand and Chicago and Milwaukee on the other was not unreasonable, and in the *Norfolk case*, *supra*, that the reasonableness of the rate on blackstrap from Philadelphia, Pa., to Norfolk, Va., could not be measured by the rates on that commodity from the Gulf ports, as "the rates from the several southern ports are highly competitive as between those ports and similarity of transportation conditions is not shown."

These cases strengthen the conclusion that the spread between the rates on blackstrap to Nashville and Birmingham can not be fixed by the relationship of class and commodity rates which are on a more normal basis, but they afford no justification for the destruction of the relationship which had been maintained between the rates on blackstrap to Nashville and Birmingham from the time that specific blackstrap rates were first published to those points. That spread should be restored. Its destruction clearly resulted in undue prejudice to complainant.

We find (1) that the rates applicable to import or interstate shipments of blackstrap, of, or released to, a value of 8 cents or less per gallon, in tank-car loads, from Mobile and New Orleans to Birmingham were, are, and for the future will be, unreasonable to the extent that they exceeded, and exceed 20 cents per 100 pounds prior to August 26, 1920, and 25 cents per 100 pounds thereafter; and (2) that the rates on the above-described traffic to Birmingham are, and for the future will be, unduly prejudicial to Birmingham and unduly preferential of Nashville to the extent that they exceed rates 2.5 cents per 100 pounds lower than the rates contemporaneously maintained on like traffic to Nashville. No proof sufficient to entitle complainant to an award of reparation under our finding of undue prejudice was submitted. We find further that complainant made shipments as described and paid and bore the charges thereon, at rates herein found unreasonable; and that it is entitled to reparation thereon in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable, with interest. Complainant should comply with Rule V of the Rules of Practice. Defendants should waive outstanding undercharges to the bases of rates herein found reasonable.

An order for the future will be entered.

No. 12433.

PACIFIC CREAMERY COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted October 31, 1921. Decided March 25, 1922.

Rates applicable on canned condensed milk, in carloads, from Glendale, Ariz. to various points in Texas found unreasonable. Reparation awarded.

Paul E. Blanchard for complainant.

F. E. Andrews for transcontinental lines.

John F. Finerty and *Alex M. Bull* for director general, as agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.
BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation manufacturing condensed milk and other dairy products at Glendale, Ariz. By complaint filed February 17, 1921, as amended, it alleges that the rates charged on 16 carloads of canned condensed milk shipped between September 1 and November 1, 1919, from Glendale to Abilene, Brownwood, Stamford, Amarillo, Corpus Christi, Waco, Ranger, Wichita Falls, Houston, Fort Worth, and San Antonio, Tex., were unjust and unreasonable to the extent that they exceeded the contemporaneous rates on like traffic from Tempe, Ariz., to the same destinations. We are asked to award reparation. Rates will be stated in amounts per 100 pounds.

Glendale is a local point on the Ash Fork & Phoenix branch of the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, 9.9 miles north of Phoenix, Ariz. Tempe is on the Arizona & Eastern, 17.9 miles from Glendale and 8 miles from Phoenix. The shipments moved as routed over the Santa Fe to Phoenix, Arizona & Eastern to Maricopa, Ariz., and the Southern Pacific and its connections beyond. The applicable combination rates were either 97.5 cents, minimum 40,000 pounds, or 83.5 cents, minimum 60,000 pounds, made up of a commodity rate of 5 cents to Phoenix, the minimum fifth-class rate of 11 cents from Phoenix to Tempe, and commodity rates of either 81.5 cents, minimum 40,000 pounds, or 67.5 cents,

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minimum 60,000 pounds beyond. Two of the shipments were undercharged 1 cent per 100 pounds.

Complainant's plant was opened for business May 1, 1918. In May, 1917, it requested the Santa Fe to establish the Tempe rates from Glendale to Texas common-point territory and was advised that this would be done. The carriers did not succeed in doing so prior to the beginning of Federal control, and thereafter complainant was unsuccessful in its negotiations with the railroad administration. After the termination of Federal control the matter was again taken up with the Santa Fe and the rates sought were established, effective November 1, 1920, over the Santa Fe via Albuquerque or Belen, N. Mex., and its connections beyond. When the shipments moved the Tempe rates also applied and now apply from Phoenix and Creamery, Ariz., the latter on the Arizona & Eastern, 2 miles from Tempe.

Complainant compared the rates assailed and the earnings thereunder with the rates and earnings on like traffic from other points from which condensed milk is shipped to representative destinations, of which the following are illustrative:

From—	To Fort Worth.			To San Antonio.			To Waco.			To Houston.		
	Distance.	Rate.	Car-mile earnings.	Distance.	Rate.	Car-mile earnings.	Distance.	Rate.	Car-mile earnings.	Distance.	Rate.	Car-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Glendale, Ariz.	¹ 1,060	² 83.5	15.7	¹ 1,065	² 83.5	15.6	¹ 1,149	² 83.5	14.5	¹ 1,274	² 83.5	13.1
Do	¹ 1,060	² 97.5	18.4	¹ 1,065	² 97.5	18.3	¹ 1,149	² 97.5	16.9	¹ 1,274	² 97.5	15.3
Do	¹ 1,060	² 67.5	12.7	¹ 1,065	² 67.5	12.6	¹ 1,149	² 67.5	11.7	¹ 1,274	² 67.5	10.6
Do	¹ 1,232	² 81.5	15.4	¹ 1,436	² 81.5	15.3	¹ 1,321	² 81.5	14.2	¹ 1,494	² 81.5	12.8
Do	¹ 1,232	² 90.5	14.69	¹ 1,436	² 90.5	12.6	¹ 1,321	² 90.5	13.7	¹ 1,494	² 90.5	12.1
Do	¹ 1,232	² 106.5	17.3	¹ 1,436	² 106.5	14.8	¹ 1,321	² 106.5	16.1	¹ 1,494	² 106.5	14.3
Galt, Calif.	¹ 1,852	² 90.5	9.77	¹ 1,857	² 90.5	9.75	¹ 1,941	² 90.5	9.33	¹ 2,066	² 90.5	8.76
Loveland, Colo.	¹ 862	² 106.5	11.5	¹ 1,142	² 106.5	11.47	¹ 961	² 106.5	10.97	¹ 1,147	² 106.5	10.31
Tempe, Ariz.	¹ 1,042	² 67.5	12.96	¹ 1,131	² 67.5	11.82	¹ 1,047	² 67.5	14.20	¹ 1,256	² 67.5	11.77
Stoughton, Wis.	¹ 993	² 81.5	15.64	¹ 1,273	² 81.5	11.94	¹ 1,062	² 81.5	12.89	¹ 1,225	² 81.5	10.75
Do	¹ 993	² 76.5	15.41	¹ 1,273	² 76.5	14.41	¹ 1,062	² 76.5	15.57	¹ 1,225	² 76.5	12.98
Do	¹ 993	² 76.5	15.41	¹ 1,273	² 76.5	12.02	¹ 1,062	² 76.5	14.14	¹ 1,225	² 76.5	12.49

¹ Route of movement.

² Minimum, 60,000 pounds.

³ Minimum, 40,000 pounds.

⁴ Rates sought from Glendale.

⁵ Route over which basis sought was subsequently established.

⁶ Minimum, 26,000 pounds.

It will be noted that the ton-mile earnings under the rates sought compare favorably with those under the rates exhibited and are generally higher under the rates assailed; and that the minima under the rates attacked and sought are higher than the minimum under the rates from Loveland and Stoughton. The car-mile earnings, on the basis of minimum weights, would be higher under the rates sought than under the rate from any other point shown except Tempe.

Complainant asserts that the combinations of three separately established rates in effect include payment for six terminal services. It quotes from *Intermediate Rate Asso. v. Director General*, 61 I. C. C., 226, wherein we said, at page 246, that—

When distances are relatively great, and when transfer at rate-breaking points is not attended by unusual costs, the combination basis, using local rates, ordinarily is abnormal and unscientific and often discriminatory, * * *. We have generally recognized that through rates should be less than the combinations.

and urges that there was no transportation condition which justified a combination of locals on this traffic and that the location of Glendale entitled it to the same rates as applied from contiguous points.

Defendants introduced no evidence on the question of unreasonableness. On brief they contend that the average earnings per car-mile on complainant's shipments, about 45 cents, were not unduly high, considering the value of the shipments, which ranged approximately from \$4,000 to \$9,000 per car, and cite several cases in which we have prescribed rates on various commodities which yielded greater revenue for distances ranging from 597 to 1,767 miles.

We find that the applicable rates were unreasonable to the extent that they exceeded either 81.5 cents per 100 pounds, minimum 40,000 pounds, or 67.5 cents per 100 pounds, minimum 60,000 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice. Collection of the undercharges should be waived.

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INVESTIGATION AND SUSPENSION DOCKET No. 1447.
SUBLIMED LEAD TO TRUNK LINE POINTS.

Submitted February 21, 1922. Decided April 5, 1922.

Reduced rates, proposed for the transportation of sublimed lead and certain other pigments, in carloads, from central territory to eastern points found not justified. Proposed reduced rates on red lead and litharge found justified. Suspended schedules ordered canceled without prejudice to the publication of schedules in conformity with the findings herein.

L. H. Strasser for respondents.

Luther M. Walter and *John S. Burchmore* for Eagle Picher Lead Company, intervener.

Frank M. Swacker for New Jersey Zinc Company, protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective December 10, 1921, respondents proposed to reduce rates on sublimed lead, red lead, white lead, litharge, zinc lead white, and zinc oxide, in carloads, from Chicago, Ill., and other points in central territory, to New York, N. Y., and other points east of Pittsburgh, Pa., and Buffalo, N. Y. Upon protest of the New Jersey Zinc Company, a manufacturer of zinc oxide and lithopone, whose main plant is at Palmerton, Pa., a Philadelphia, Pa., rate point, the operation of these schedules was suspended until May 9, 1922. The Eagle Picher Lead Company was permitted to intervene in behalf of respondents. Rates will be stated in cents per 100 pounds.

Sublimed lead, white lead, zinc lead white, and zinc oxide are white powders produced at various points in official classification territory. They are used, competitively, in the manufacture of paints, and move westbound as well as eastbound. Lithopone, or sulphate of barium with sulphate of zinc, is also a white powder used in the manufacture of paints, but the suspended schedules do not apply to it. It competes chiefly with white lead and zinc oxide, and is said to be the cheapest of the white pigments. Most of these pigments are also used in the manufacture of rubber goods and for other purposes in the arts. Red lead and litharge do not compete with them,

according to this record, and the protest with respect to these commodities was withdrawn. Apparently they enter into the structure of storage batteries and are used in glassmaking.

Class rates between points in central territory and points in trunk-line and New England territories are based upon those between Chicago and New York. These base rates are usually the same eastbound and westbound, or upon approximately the same level, and commodity rates ordinarily conform to this adjustment. The eastbound commodity rate from Chicago to New York on the above-named lead pigments and zinc oxide, 42 cents, is the same as the westbound commodity rate from New York to Chicago on zinc oxide and lithopone.

By the suspended schedules respondents propose to make rates eastbound based upon a rate of 32 cents from Chicago to New York. No change in the westbound rates was or is proposed. The resulting rates to destinations in the east may be illustrated by the following: The present rates to Norfolk, Va., from St. Louis, Mo., and from Palmerton are 46 and 31.5 cents for distances of 1,006 and 339 miles, respectively, the spread being 14.5 cents. If the suspended schedules become effective the rate from St. Louis to Norfolk would be 32 cents, reducing the spread to 0.5 cent. The present rate from Chicago to Norfolk, 924 miles, is 39 cents; the proposed rate is 29 cents, or 2.5 cents less than from Palmerton. The present rate from Chicago to Boston, Mass., 1,014 miles, is 44 cents and the proposed rate 34 cents, whereas the rate from Palmerton, 325 miles, is 28 cents.

Protestant's objection to the proposed reduction in eastbound rates is founded (1) upon the disadvantage of 10 cents to which it would be subjected in the base rate on zinc oxide westbound as compared with the eastbound base rate and (2) upon the reduction of the spread between its rates and those from points in central territory to eastern destinations.

The rates under suspension were also published to apply on copper ore and copper concentrates but, as to these commodities, were not suspended.

Respondents state that for many years they have maintained a relationship between the eastbound rates on ores, metal pig, sublimed lead, and paint pigments; that the rates on sublimed lead have been substantially the same as those on lead and zinc ores; that since 1909 the rates on paint pigments have been the same as those on sublimed lead; that the rates on ores, concentrates, and smelter products from Montana-Utah points to the Atlantic seaboard were reduced; that reductions from Mississippi River crossings and from Chicago resulted; that sublimed lead had been carried forward along with the other articles on which reduced rates were published; and that cer-

tain tariff provisions made the reductions also applicable to the other paint pigments. They further say that the reason why rates were not reduced on shipments from points east of the Buffalo-Pittsburgh line to eastern destinations is that the Central Freight Association, which compiled the schedules under suspension, has no control over such rates. This lack of control by the agent does not excuse its principals. Nor is there any showing that sublimed lead, and other pigments, compete with ores and metal pig, to which they bear little resemblance.

Respondents further contend that inasmuch as they propose reductions they are under no burden of proof as to the reasonableness or propriety of the rates they propose; that the order of suspension was improperly made; and that it should be vacated. The proponent of a change in lawfully existing rates must be prepared to justify the change, if called in question. The interstate commerce act provides for prevention as well as for cure. Undue prejudice and preference may be brought about as readily by reducing one as by increasing the other of two related rates. *Coal from Detroit, Toledo & Ironton R. R. Mines*, 64 I. C. C., 564.

We find that the proposed reduced rates eastbound on sublimed lead, white lead, zinc lead white, and zinc oxide, without corresponding reductions in westbound rates on the same commodities and without corresponding reductions in rates on the same commodities from points east of the Buffalo-Pittsburgh line to eastern destinations, would result in undue prejudice to protestant and other manufacturers east of that line and in undue preference of manufacturers in central territory, and therefore have not been justified. The proposed reduced rates may be made effective on red lead and litharge.

An order will be entered requiring the cancellation of the schedules under suspension without prejudice to the establishment on not less than five days' notice of rates in conformity with the findings herein.

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WYANDOTTE TERMINAL RAILROAD COMPANY.
SECOND INDUSTRIAL RAILWAYS CASE.

No. 4181.

IN THE MATTER OF ALLOWANCES TO SHORT LINES OF
RAILROAD SERVING INDUSTRIES.

INVESTIGATION AND SUSPENSION DOCKET No. 414.

CANCELLATION OF RATES IN CONNECTION WITH
SMALL LINES BY CARRIERS IN OFFICIAL CLASSIFI-
CATION TERRITORY.

Submitted January 14, 1922. Decided April 4, 1922.

Upon further hearing, the Wyandotte Terminal Railroad Company found to be a common carrier of property subject to the interstate commerce act, which may lawfully receive from its trunk-line connections compensation in the form of divisions of joint rates or absorptions of its switching charges under appropriate tariff provision on interstate shipments to and from points on its line, such divisions or absorptions to be no more than reasonable. Former report, 62 I. C. C., 1.

Howard Streeter and Willis, Streeter, Murphy & Berns for Wyandotte Terminal Railroad Company.

No appearance for trunk-line connections.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

No exceptions were filed to the examiner's proposed report.

Upon petition of the Wyandotte Terminal Railroad Company, hereinafter called the Terminal, the portion of this proceeding relating to it was reopened for further hearing. In our former report, 62 I. C. C., 1, the Terminal was found not to be a common carrier subject to the interstate commerce act. No issue is taken with the statement of facts contained in that report based upon the record then before us. The further hearing brought out certain changed conditions and additional facts.

The Terminal is organized under the general railroad laws of the State of Michigan. It files tariffs with us and with the Michigan Public Utilities Commission. The Michigan commission recently authorized an increase in the capital stock of the Terminal from \$15,000 to \$500,000. Its property is assessed by the State board of assessors on the same basis as that of other carriers in the State. Al-

though it does not appear that the Terminal has ever exercised the power of eminent domain, the State laws give it that power.

At the time of the former hearing the Terminal had title to 1.286 miles of main track and leased 20.478 miles of spur tracks and sidings. It also leased its locomotives, cars, and other equipment. Since that time it has acquired title to the tracks and right of way over which it operates, with the exception of certain sidings adjacent to the industries served. The Terminal now owns 2.35 miles of main and spur tracks on the Wyandotte division, and 4.53 miles of main and spur tracks on the Ford division. No distinction is made between main and spur tracks, as only switching service is performed. The Terminal now owns 7 locomotives, of 110,000-pound type, 50 steel gondola hopper cars, 19 wooden gondola cars, and 1 flat car. On August 31, 1921, it had on hand:

Materials and supplies -----	\$36, 516. 88
Cash -----	10, 825. 08
Accounts receivable-----	6, 194. 50
Total-----	<u>53, 536. 46</u>

The total value of all the property is estimated by its auditor to be \$258,000. It is negotiating with one of its trunk-line connections for trackage rights which will connect the two divisions of its line. There is some traffic between these two divisions. It also contemplates the building of a classification yard and public team track on land which it now owns and which will serve the city of Wyandotte, Mich.

The controlling and affiliated industries served are the Michigan Alkali Company, the J. B. Ford Company, the Wyandotte Portland Cement Company, and the Detroit City Gas Company, Station No. 1. In addition to these, the Pennsylvania Salt Company and the Detroit Ship Building Company, which are not affiliated with the Terminal by means of stock ownership, are served indirectly by the Terminal. The Pennsylvania Salt Company is served by the Wyandotte Southern, which connects with the Terminal. Some cars move via this connection, being switched from one of the Terminal's trunk-line connections. Some cars consigned to the Detroit Ship Building Company are switched from the Detroit, Toledo & Ironton, hereinafter called the Ironton, or from the Detroit & Toledo Shore Line, hereinafter called the Shore Line, to the Michigan Central, which is the only line reaching this plant. The industries served directly are supplied with cars by the Terminal. The trunk lines have standing orders from these industries to turn all cars over to the Terminal for classification and spotting.

There is no physical connection except through the rails of the Terminal at Wyandotte or Ford, Mich., between the Ironton or the

Shore Line, which uses the Ironton tracks, and the Michigan Central. In order to effect interchange between these lines, it is necessary that an overhead switching service be performed by the Terminal. For this service the Terminal assesses its published rates. The number of cars so handled from 1919 to 1921, inclusive, are as follows:

From—	To—	1919.	1920.	1921.
		<i>Cars.</i>	<i>Cars.</i>	<i>Cars.</i>
Ironton.....	Michigan Central.....	40	273	.....
Shore Line.....	.....do.....	8	28	.....
Michigan Central.....	Ironton.....	11	6	1
New York Central.....	.....do.....	.....	4	.....

The Terminal maintains the only public team track in Ford, which has a population of about 4,000. This team track has a capacity of three cars and an additional track might be used for this purpose. A considerable number of inbound carload shipments have been switched by the Terminal to this team track, 41 cars in 1919, 62 cars in 1920, and 46 cars from January 1 to September 30, 1921. The shipments were consigned to different individuals and companies and consisted of lumber, household goods, cement, brick, tile, coal, furniture, pipe, wire, stone, gravel, bottles, lime, machinery, etc. All but three of these shipments either originated at points outside of the State or moved over interstate routes. Charges thereon were collected at the published rates. No less-than-carload freight is handled and no freight office or agent is maintained. The Terminal states that cars for outbound shipments could be ordered from its yardmaster at Ford or from its traffic manager, whose office is in the building occupied by the general offices of the Michigan Alkali Company at Ford. The team track opens on a public highway and is not within any plant inclosure.

We find that the Wyandotte Terminal Railroad Company is a common carrier of property subject to the interstate commerce act, which may lawfully receive from its trunk-line connections compensation out of the through interstate rates to and from points on its lines in the form of divisions of joint rates, or of absorptions of its switching charges under appropriate tariff provision. Its compensation must not be more than is reasonable and a complete and specific statement of any basis agreed upon must be filed with us immediately upon its adoption.

No order is necessary.

No. 11713.¹

OPP COAL COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted July 18, 1921. Decided April 3, 1922.

Rates applicable on intrastate carload shipments of bituminous coal, during Federal control, from various Indiana mines to Aurora and Frankton, Ind., found unreasonable. Reparation awarded.

O. P. Gothlin for complainants.

John F. Finerty, Royal T. McKenna, Fred W. Heid, K. L. Richmond, and W. F. Peter for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by defendants to the separate reports proposed by the examiners in these cases. The issues are similar and we will deal with them in one report. Our conclusions differ somewhat from those recommended by the examiners.

Complainants are Charles A. Opp, a coal dealer at Aurora, Ind., doing business as the Opp Coal Company, and the Barnett Lumber Company, a corporation doing a retail coal business at Frankton, Ind. They allege that the rates charged on 26 carloads of bituminous coal, shipped intrastate between June 29 and October 1, 1918, from points in the Linton and Princeton districts of southwestern Indiana to Aurora and Frankton were unreasonable to the extent that they exceeded rates of \$1.30 and \$1.32 subsequently established to the respective destinations. Reparation only is sought. Rates are stated in amounts per net ton.

The shipments to Frankton originated at Fort Branch and moved over the Chicago & Eastern Illinois to Terre Haute, the Cleveland, Cincinnati, Chicago & St. Louis, through Indianapolis, to Anderson, and the Pittsburgh, Cincinnati, Chicago & St. Louis beyond, 207 miles. Charges were collected at a rate of \$2.30. The joint rate applicable over the route of movement was \$2. The shipments to

¹ This report also embraces No. 11627, Barnett Lumber Company v. Director General, as Agent, Chicago & Eastern Illinois Railroad Company, et al.

Aurora moved over various routes, the average haul being 190 miles. Joint commodity rates applied to some and distance and combination rates, respectively, to others. The rates applicable varied from \$1.40 to \$2.60. The rates charged varied from \$1.40 to \$1.95. A number of overcharges and undercharges appear to be outstanding on the shipments to the two destinations.

Prior to the war complainants ordinarily obtained their coal from Ohio, West Virginia, and other Eastern States, shipments to Aurora being chiefly by barge on the Ohio River. Where the United States Fuel Administrator established a zoning system, they were compelled to turn to other sources of supply. The movement, therefore, from Indiana mines had been relatively light and the only rates generally available were combination rates. In January, 1918, to meet the emergency, the carriers, at the instance of the Indiana Public Service Commission established a scale of distance rates. These rates were limited to expire April 30 of that year, but were republished before that date. On October 5, 1918, after the shipments moved, a group rate of \$1.30 became effective from the districts named to Aurora and a rate of \$1.32 from Fort Branch to Frankton.

Complainants urge that there was undue delay in establishing the group rates. They compare the rates applicable to the shipments with the intrastate rates contemporaneously applied on coal, ranging from \$1.30 to \$1.86 for distances of from 174 to 408 miles. Defendant criticizes the rates used in the comparisons on the ground that most of them applied to points in the Indiana "gas belt," where the volume of movement was heavy and where, as a rule, rates were maintained on a basis lower than to Indiana points generally. Aurora and Frankton are not in the gas belt. Defendant denies that the delay in making the reduced rates effective was due to negligence. He contends that in publishing the tariffs which carried these lower rates he undertook to establish a relationship between the different coal-producing groups in western Indiana which theretofore had not existed, with resulting increases and reductions, and that the rates to the basis of which reparation is sought were not intended to be the measure of reasonable rates on traffic which had moved prior to their establishment.

The shipments to Frankton represented the only coal purchases made by complainant, Barnett Lumber Company, at Fort Branch, and it is apparent that the shipments to Aurora were emergency movements.

The \$2 rate applicable on the shipments to Frankton yielded approximately 9.7 mills per ton-mile and 45.97 cents per car-mile based on the average weight of 47.58 tons. Corresponding revenues under

the \$1.32 rate would be 6.38 mills and 30.3 cents, respectively. The earnings on the shipments to Aurora at the average distance and the average applicable rate of \$1.96 were approximately 10.3 mills per ton-mile and 47.1 cents per car-mile based on the average weight of 45.66 tons. The corresponding revenues under the \$1.30 rate would have been 6.8 mills and 31.24 cents, respectively. Defendant submitted no rate comparisons. In *Union Traction Co. v. Director General*, 66 I. C. C., 157, we found that rates of \$1.20 to \$1.33 charged during Federal control on shipments of bituminous coal from mines in the Linton group to destinations northeast of Indianapolis for an average distance of 150 miles were not unreasonable. Under these rates the average earnings were 8.4 mills per ton-mile. In two other cases, *Western Stoneware Co. v. C., B. & Q. R. R. Co.*, 63 I. C. C., 215, and *Merchants Coal & Coke Co. v. Director General*, 64 I. C. C., 73, we considered rates on bituminous coal in Indiana and Illinois for hauls of 300 miles or over, and found justified rates yielding approximately 7 mills per ton-mile. For the shorter distances here considered the ton-mile earnings should be somewhat higher. A yield of 8 mills per ton-mile would average approximately \$1.60 per ton as applied to these shipments.

We find that the applicable rates were unreasonable to the extent that they exceeded \$1.60 per net ton; that complainants made the shipments as described and paid and bore charges thereon; that they were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice, and include in the statements outstanding overcharges and undercharges.

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No. 10405.¹

SOUTHPORT MILL, LIMITED,

v.

DIRECTOR GENERAL, CHICAGO & NORTH WESTERN
RAILWAY COMPANY, ET AL.

Submitted January 11, 1922. Decided March 14, 1922.

1. Previous report, 55 I. C. C., 154, modified.
2. Rates on palm-kernel oil or on copra oil, in carloads, from New Orleans and Baton Rouge, La., to Kansas City and St. Louis, Mo., Chicago, Ill., Buffalo, N. Y., and other eastern points found unreasonable.
3. Rates on palm-kernel oil or on copra oil, in carloads, from New Orleans, La., to Jersey City and Babbitt, N. J., and Brooklyn, N. Y., in effect on and after June 25, 1918, found not unreasonable.
4. Rates on palm-kernel meal from New Orleans, La., to Cedar Rapids, Iowa, Peoria, Ill., and other points in Illinois, and on copra cake from Rolling Fork, Miss., to New Orleans, La., found unreasonable.
5. Reparation awarded to the basis of the maximum rates found to have been reasonable.

S. R. Barnett for complainants.

John F. Finerty, Thos. M. Woodward, and Alex M. Bull for
Director General of Railroads.

A. P. Humburg for other defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING.

DANIELS, *Commissioner*:

In our original report in these cases, 55 I. C. C., 154, we found that the rates charged on copra and palm-kernel products from New Orleans and Baton Rouge, La., to St. Louis and Kansas City, Mo.,

¹ This report also embraces No. 10405 (Sub-No. 1), Terminal Oil Mill Company v. Director General, Chicago & North Western Railway Company, et al.; No. 10405 (Sub-No. 2), Same v. Director General and Missouri Pacific Railroad Company; No. 10407, Southport Mill, Limited, v. Director General and Yazoo & Mississippi Valley Railroad Company; No. 10408, Same v. Director General, Illinois Central Railroad Company, et al.; No. 10409, Same v. Director General, New Orleans, Texas & Mexico Railway Company, et al.; No. 10410, Terminal Oil Mill Company v. Director General, New Orleans, Texas & Mexico Railway Company, et al.; No. 10464, Southport Mill, Limited, v. Director General, Chicago & Alton Railroad Company, et al.; No. 10519, Same v. Director General, Chicago, Peoria & St. Louis Railroad Company, et al.; No. 10557, Same v. Director General, Erie Railroad Company, et al.; No. 10558, Same v. Director General, Illinois Central Railroad Company, et al.; No. 10564, Same v. Director General, New Orleans, Texas & Mexico Railway Company, et al.; and No. 11974, Same v. Director General, Baltimore & Ohio Railroad Company, et al.

and Chicago and Peoria, Ill., Jersey City, N. J., and Brooklyn, N. Y., and between certain other points were unjust and unreasonable to the extent that they exceeded the rates contemporaneously applicable on certain products of cotton seed, and awarded reparation. Upon petition of the Director General of Railroads these cases were reopened for further hearing, which has been had. Exceptions were filed by complainants to the examiner's proposed report, which was based upon the whole record as now constituted, and the issues were orally argued before us. We have reached conclusions in part differing from those suggested by the examiner.

Since the original hearings, the properties of the Terminal Mill Company have been acquired by the Southport Mill, Limited, which will hereinafter be termed the complainant. No. 11974 was consolidated with these cases, but no additional evidence was introduced in its support except certain exhibits similar to those filed at the original hearings, and proof of payment of freight charges.

The director general alleges that we erred in finding that the rates on cottonseed products were maximum reasonable rates on copra and palm-kernel products when the shipments moved. Counsel for the director general stated upon argument that he is willing "for the purpose of this case that the commission should assume that unless the director general shows that the cottonseed basis is a subnormal basis, the commission is justified in assuming it is a reasonable basis, and a basis for reparation in this case." No damage has been shown to have resulted from the alleged undue prejudice and that issue will not be considered, as the rates asked are now in effect.

The rates applicable on cottonseed products, as shown in our former report, were subsequently established on the palm-kernel and copra products under consideration. There is therefore no question of rates for the future; the only issue presented is one of reparation.

The shipments under consideration moved principally from New Orleans and Baton Rouge during 1917, although some of the shipments moved in 1918, both prior to and after June 25, and two in January, 1919. A complete statement of the points of origin and destination, average loading, rates applicable, and of car-mile earnings on the commodities in question in comparison with rates and earnings on cottonseed products based upon the same average weight is shown in the appendix. The average loading to the particular points is shown in the original report. Consideration will first be given to the rates on palm-kernel and copra or coconut oil. Rates are stated herein in cents per 100 pounds.

RATES ON PALM-KERNEL OIL AND COPRA OIL TO KANSAS CITY, MO.

Fifty-eight shipments of palm-kernel oil moved from New Orleans to Kansas City in 1917, and two shipments of copra oil in January, 1919. As shown in the appendix, the applicable commodity rate of 41 cents was collected on the shipments that moved prior to June 25, 1918, and the fifth-class rate of 47.5 cents on those that moved after June 25. The route traversed was nearly 100 miles longer than the short route, and the earnings under the rates charged, based upon the average weight, were 28.84 and 33.41 cents per car-mile over the route of movement. Testimony was introduced by defendants seeking to show that the class rates charged to Kansas City and other destinations were depressed rates. Without passing upon whether that contention is established, it is sufficient to state that we are convinced upon this record that the commodities in question were entitled to a basis lower than the class rates because of the volume of movement and the relationship to other vegetable products such as cottonseed products. Prior to June 25, 1918, the rate on cottonseed oil from New Orleans to Kansas City was 30 cents, and on the basis of the average loading shown with respect to palm-kernel oil, 67,030 pounds, would have yielded 21.10 cents per car-mile over the route of movement and 23.17 cents over the short route.

Defendants testified that prior to 1860 cottonseed was considered of no value. In 1867 there were but few cottonseed-oil mills in this country, but from that date steady progress was made by the cottonseed-oil industries. Defendants assert that very low rates were originally established on cottonseed products to encourage the development of that industry. Water competition along the Mississippi River was a very important factor in fixing the original basis of rates on cottonseed oil and meal. Some of the first cottonseed-oil mills were located at New Orleans, Natchez, Miss., and Memphis, Tenn., on the Mississippi River. The rates on cottonseed oil were made by the boat lines on a per barrel basis, and the earlier rail rates appear to have been made on a package basis, indicating the effect of the then existing water movement; later the rail carriers in competition with the boat lines established rates on oil in tank cars on the gallonage basis that would allow competition with the package rates of the boat lines. Thus, it is explained that the Mississippi River has been the influence that has controlled the making of the rates on cottonseed products, and while the competition on the Mississippi River was negligible at the time the shipments moved, the carriers urge that they have not been able to increase the rates to a normal basis. The same character of water competition existed along the Atlantic seaboard. The carriers have from time to time planned increases in the

rates on cottonseed products, but, through failure to agree between themselves or otherwise, no increases in the rates on those commodities have been made since shortly prior to 1900 to June 25, 1918, except 2 cents in 1908.

Defendants show that copra and palm kernel were imported during the war and were not more valuable than cottonseed products. The carriers were unable to foretell whether the volume of traffic derived therefrom would equal cottonseed products, and they therefore originally put these products on the class basis and now insist that, except for the alleged low rates on cottonseed products, no valid objection could have been made either to the classification of or the rates charged on them.

Complainant, in May, 1918, requested the railroad administration to establish rates on copra oil and palm-kernel oil from New Orleans to various eastern destinations, including many of those involved, on the basis of 5 cents per 100 pounds higher than the contemporaneous rates on cottonseed oil, observing the fifth-class rates as maxima. However, it insists that as the carriers have voluntarily retained the alleged subnormal level of rates on cottonseed products, this would indicate that it is not in fact subnormal; that if it had been a subnormal level the director general would have increased the cottonseed-products rates to the basis of the rates on copra and palm-kernel products instead of reducing the latter to the level of the rates on cottonseed products. The southern freight traffic committee recommended to the director general a reduction of the rates on copra and palm-kernel products, although it was contended that the basis of rates on cottonseed products was too low. Inasmuch as the various products were in competition with each other, defendants state that it was thought better to standardize by applying the lower basis temporarily on all products until a proper readjustment could be effected. On behalf of the railroad administration it was testified that during 1919 it was deemed highly impolitic to increase rates, because, the war being at an end, public opinion would not countenance a revision of rates upward. It was further testified that the railroad administration therefore removed the undue prejudice by reducing the rates on copra and palm-kernel products, although of opinion that the more equitable adjustment would have been to increase the rates on cottonseed products.

It is further urged by defendants that the rate on cottonseed oil from New Orleans to Kansas City was a subnormal rate in comparison with other rates on the same commodity, and should not be used as a measure of a reasonable rate on palm-kernel and copra oil. To support this contention the following rates on cottonseed oil in effect prior to June 25, 1918, are cited:

From—	To—	Distance.	Rate.
		<i>Miles.</i>	<i>Cents.</i>
Denison, Tex.....	Kansas City, Mo.....	410	35
Spartanburg, S. C.....	Detroit, Mich.....	766	44.9
Muskogee, Okla.....	Denver, Colo.....	784	50
Abbeville, S. C.....	Grand Rapids, Mich.....	890	46.5
Ozark, Ala.....	Kansas City, Mo.....	911	48

Altogether 25 rates on cottonseed oil that are higher than the 41-cent rate are cited. Defendants also seek to show that the rates in issue on palm-kernel oil and copra oil compare favorably with contemporaneous rates on petroleum, linseed oil, corn oil, road oil, vinegar, varnish, corn sirup, soap, turpentine, and liquid paints to and from other points for substantially the same or less distances. We are not convinced that the rates cited in comparison should be the measure of the rates in question, as manifestly different transportation conditions prevail between many of the points shown. Rate comparisons similar to those introduced by defendants were carefully considered upon the original record. In *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.*, 35 I. C. C., 94; 39 I. C. C., 497; and *Oklahoma Cottonseed Crushers' Asso. v. A., T. & S. F. Ry. Co.*, 42 I. C. C., 571, January 8, 1917, we prescribed a scale of rates for distances to and including 600 miles on cottonseed oil from Oklahoma points to Kansas City and other points, and also a scale of rates on cottonseed cake, meal, and hulls for application from points in Oklahoma to points in Kansas, Missouri, Iowa, Nebraska, Minnesota, North Dakota, South Dakota, Montana, Wyoming, and Colorado common points and points in Colorado east thereof for distances ranging to and including 1,000 miles, the rates for distances between 1,000 miles and 1,500 miles having been agreed upon between the parties.

The scale on cottonseed oil, as stated, terminated at 600 miles. If that scale, hereinafter referred to as the Oklahoma scale, were extended to include 953 miles at the same rate of progression—that is, 0.5 cent increase for each additional 25 miles—a rate of 32.5 cents would be obtained for a single-line haul, and where the distance is substantial, as in this instance, we are not convinced that anything should be added for a joint-line haul. This rate would have earned over the route of movement to Kansas City 22.86 cents per car-mile, based on the average of 67,030 pounds, whereas the cottonseed-oil rate upon the average loading here shown would have earned 21.10 cents per car-mile. The Oklahoma scale was prescribed upon a showing that cottonseed oil loaded between 55,000 and 60,000 pounds. The car-mile earnings on the average loading involved at a 32.5-cent rate over the short route to Kansas City would have been 25.1 cents, whereas under the Oklahoma scale on an average

loading of 58,000 pounds there considered the earnings would have been 21.72 cents over the short route in question and 19.78 cents over the route traversed.

In *Peet Brothers Mfg. Co. v. Director General*, 63 I. C. C., 345, decided August 4, 1921, we found the Oklahoma scale, increased 25 per cent under General Order No. 28, of the director general, reasonable on shipments of copra oil, in tank-car loads from Prague, Okla., to Kansas City during June and July, 1918, and prescribed that scale, appropriately increased, for the future. We said in the case cited in referring to the *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.*, *supra*: "There is nothing of record to indicate that the rates therein prescribed were at that time unreasonably low." Most of the shipments in the instant case moved a year prior to those from Prague. In *Procter & Gamble Co. v. A. C. R. R. Co.*, 64 I. C. C., 213, decided October 4, 1921, we prescribed for future application on vegetable oils, including cottonseed, coconut, and palm-kernel oils, from mill points in Oklahoma, Arkansas, and Louisiana to Dallas, Tex., substantially the Oklahoma scale appropriately increased 25 per cent under General Order No. 28, and 35 per cent as authorized by us on July 29, 1920. In *Chamber of Commerce, Houston, Tex., v. A. & S. Ry. Co.*, 53 I. C. C., 645, decided May 31, 1919, we found that the rate on coconut oil, which is sometimes referred to as copra oil, from Houston, Tex., to St. Louis prior to the increases of June 25, 1918, under General Order No. 28, should not have exceeded 35 cents, the rate contemporaneously in effect on cottonseed oil. The 35-cent rate also applied on cottonseed oil from Texas common points and numerous Texas producing points to St. Louis for distances ranging from 686 to 1,032 miles.

We are not convinced that the cottonseed-oil rate from New Orleans to Kansas City was the maximum reasonable rate that should have applied on shipments of palm-kernel and copra oil when the shipments moved, but we are of the opinion that the rate assailed from New Orleans to Kansas City was unreasonable to the extent that it exceeded 32.5 cents per 100 pounds prior to June 25, 1918, and 40.5 cents thereafter.

RATES ON COPRA OIL TO ST. LOUIS, MO.

One shipment of copra oil in barrels was made from New Orleans to St. Louis on February 13, 1918, on which the fifth-class rate of 40 cents was charged, yielding over the route of movement 31.95 cents per car-mile based on the actual weight and 25.45 cents based on the average weight of all the shipments to western points. The commodity rate on cottonseed oil, corn oil, and peanut oil in tank cars was 22 cents, and on the average loading shown would have

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yielded 21.10 cents per car-mile over the route of movement. Various rates are cited indicating that the rate assailed compared favorably with rates on cottonseed oil from other points in the South to northern points. An exhibit shows 34 rates on cottonseed oil, 31 of which are 10 cents or more higher than the 22-cent rate on cottonseed oil from New Orleans to St. Louis. The following are typical:

Texarkana, Tex., to St. Louis, Mo-----	493 miles, 25 cents.
Ozark, Ala., to Chicago, Ill-----	842 miles, 39 cents.

The Oklahoma scale on cottonseed oil in tank cars, extended in the manner previously indicated, would have resulted in a rate of 29 cents from New Orleans to St. Louis at the time and over the route of movement. The shipment in question moved in a box car and consequently the possible return of an empty tank car was not contemplated as in the case of shipments of cottonseed oil.

In connection with the discussion of the rates to St. Louis it may be well at this time to point out the general facts established with respect to the rates to points on and east of the Mississippi River. It has been demonstrated that the contemporaneous rates on cottonseed products between the points under consideration were in almost every instance less than are shown to be maximum reasonable rates to apply on the commodities involved. Voluminous exhibits of rates applying between hundreds of points in the entire territory east of the Rocky Mountains disclose a marked lack of uniformity. It was strongly argued by defendants in *Chamber of Commerce, Houston, Tex., v. A. & S. Ry. Co., supra*, and referred to in the instant case that the general level of rates in southeastern territory is lower than in southwestern territory. Also it has been recognized that the transportation conditions are more favorable generally to the points of destination on and east of the Mississippi River than to points west thereof, and the record has accordingly established the fact that the rates under consideration to destinations on and east of the Mississippi should be somewhat less than to the other destinations involved.

We are unable on this record to find that the rate on cottonseed oil was a maximum reasonable rate to apply on copra oil from and to the points in question, but we are of the opinion and find that a maximum reasonable rate on the shipment in question should not have exceeded 26 cents per 100 pounds, and our finding in the original report is accordingly modified.

RATES ON COPRA OIL TO CHICAGO, ILL.

Six shipments of copra oil moved from New Orleans to Chicago and two from Baton Rouge prior to June 25, 1918. The fifth-class rate of 47 cents was charged. Forty-one rates on cottonseed oil are

compared with the 27-cent rate on that commodity, from New Orleans and Baton Rouge to Chicago, to show that the cottonseed-oil rates were subnormal between the points in question. Of these rates 32 were 15 cents or more higher and all were 7 cents or more higher than the 47-cent rate charged. As typical the following rates on cottonseed oil in effect prior to June 25, 1918, are cited:

From—	To—	Distance.	Rate.
		<i>Miles.</i>	<i>Cents.</i>
Tulsa, Okla.....	Denver, Colo.....	730	50
Oklahoma City, Okla.....	Chicago, Ill.....	831	35
Troy, Ala.....	Kansas City, Mo.....	847	48
Columbia, Ala.....	Chicago, Ill.....	857	44
Chickasha, Okla.....	do.....	866	35
Roanoke, Ala.....	Kansas City, Mo.....	878	45
Abbeville, S. C.....	Grand Rapids, Mich.....	890	46.5
Camden, S. C.....	Chicago, Ill.....	907	44
Alexandria, La.....	do.....	909	34
Ozark, Ala.....	Kansas City, Mo.....	911	48

It is observed that the rate assailed to Chicago is 6 cents higher than the rate assailed to Kansas City, although the rate on cottonseed oil to Chicago is 3 cents lower than the contemporaneous rate on that commodity to Kansas City. One of complainant's exhibits tends to show that New Orleans and Baton Rouge are the farthest-distant points in a group of origin points on cottonseed oil to Chicago in a destination group and that the average short-line distance between the groups is 600 miles. The Oklahoma scale for 600 miles is 25 cents for single-line hauls and 27 cents for joint-line hauls. That scale extended in the manner previously outlined would result in a single-line rate of 31.5 cents for the distance in question and based on the average loading to Chicago would earn 24.23 cents per car-mile from New Orleans and 26.55 cents from Baton Rouge, while based on the average loading to western points involved would earn 22.97 cents from New Orleans and 23.18 cents from Baton Rouge.

We find that the rate from New Orleans and Baton Rouge to Chicago on copra oil, prior to June 25, 1918, was unreasonable to the extent that it exceeded 28.5 cents per 100 pounds.

RATE ON PALM-KERNEL OIL TO BUFFALO, N. Y.

One shipment of palm-kernel oil was made December 14, 1918, from New Orleans to Buffalo at the applicable fifth-class rate of 59 cents. As observed, the cottonseed-oil rate was 43 cents. Defendants cite 52 rates on cottonseed oil between various points to show that the 43-cent rate on that commodity to Buffalo, 1,452 miles, the route of movement, and 1,281 miles, the short route, was too low to apply on copra oil. They observe that the 43-cent rate is 10

cents or more lower than any of the rates cited and 15 cents or more lower than 21 other rates. Apparently the short routes are used for purposes of comparison. The following table of rates on cottonseed oil illustrates the comparisons:

From—	To—	Distance.	Rate.
		<i>Miles.</i>	<i>Cents.</i>
Moorestboro, N. C.....	Dayton, Ohio.....	597	59.5
Cordale, Ga.....	Chicago, Ill.....	886	55
Albany, Ga.....	do.....	921	55
Alexandria, La.....	Buffalo, N. Y.....	1,269	54
Oklahoma City, Okla.....	do.....	1,295	54
Little Rock, Ark.....	Jersey City, N. J.....	1,373	52.5
Mansfield, Ark.....	Philadelphia, Pa.....	1,421	52.5
Texarkana, Tex.....	Albany, N. Y.....	1,437	82
Mansfield, Ark.....	Jersey City, N. J.....	1,512	55
Eunice, La.....	do.....	1,527	65

The value of these comparisons is greatly impaired by inconsistencies illustrated by the facts that the rate for 597 miles is greater than for 1,512 miles, and that the rate of 54 cents cited for hauls of 1,269 and 1,295 miles, substantially the short route here involved, is greater than the rate for 1,373 and 1,421 miles. The rates cited might more easily be said to show the rates chaotic rather than normal or subnormal. The rates cited are higher than many of the rates in the West where the transportation conditions are less favorable. For example, as already cited, a rate of 35 cents applied for 686 to 1,032 miles from Texas points to St. Louis, which, increased 25 per cent under General Order No. 28, would have been 44 cents. We are convinced that defendants' exhibits are sufficient to show that the 43-cent rate on cottonseed oil was less than a reasonable maximum rate to apply on copra oil when the shipment moved, and to that extent our findings in the original report are modified. The rate of 59 cents charged, in view of certain rates cited, such as 52.5 cents for 1,421 miles, indicates that for the distance from New Orleans to Buffalo, comparison being made over the short routes, the rate should have been less than 52.5 cents. Complainant observes that the rates from New Orleans also applied from points more than 200 miles less distant and contends that the average distance from the so-called group should govern rather than the actual distance from New Orleans. The average short-line distance from the New Orleans group to the Buffalo-Pittsburgh group is shown by complainant to be 1,150 miles. Complainant directs special attention to the Oklahoma scale if extended to the actual distances traversed to Buffalo and other eastern points. Under that scale, increased in the manner suggested, the rate over the short route to Buffalo would have been 48 cents and over the route of movement 53 cents, while for the average distance from group to group the rate would have been only 36 cents.

We find that the 59-cent rate assailed was unreasonable to the extent that it exceeded 47.5 cents per 100 pounds.

RATES ON COPRA OIL TO PHILADELPHIA, PA.

Five shipments of copra oil moved from Baton Rouge to Philadelphia prior to June 25, 1918, on which a rate of 40 cents was charged, and one afterwards on which 50 cents was charged. The rate legally applicable prior to June 25, 1918, was the fifth-class rate of 48 cents and subsequently 60 cents. Consequently, the former shipments were undercharged 8 cents and the latter 10 cents per 100 pounds.

The contemporaneous rates on cottonseed oil were 37 cents prior to June 25, 1918, and 46.5 cents thereafter. The 46.5-cent rate was subsequently, on February 1, 1919, made applicable on copra oil. Exhibits similar to those introduced with respect to other destinations involved are of record showing that the rates on cottonseed oil from Baton Rouge to Philadelphia are lower than rates on that commodity between certain other points for like or less distances. The Oklahoma scale is cited by complainant in support of our original findings in the instant case. If that scale were extended to 1,550 miles in the manner previously described, a rate of 44 cents would result, prior to June 25, 1918, or 7 cents more than the rate on cottonseed oil from Baton Rouge to Philadelphia. The car-mile earnings under a rate of 44 cents would have yielded over the route of movement 20.86 cents, based on the average weight to eastern points. The cottonseed-oil rate of 37 cents, in effect prior to June 25, 1918, would have earned 17.54 cents per car-mile, and the rate of 46.5 cents, in effect on and after June 25, 1918, would have earned 22.04 cents per car-mile. The earnings under these rates over the short route were, of course, considerably higher. Complainant shows that the average distance from the so-called Baton Rouge group to the Philadelphia group is about 1,150 miles, for which the extended Oklahoma scale would have been 36 cents prior to June 25, 1918.

Upon further consideration of all of the facts of record, we find that a maximum reasonable rate on the shipments in question from Baton Rouge to Philadelphia would not have exceeded 39.5 cents per 100 pounds prior to June 25, 1918, and 49.5 cents thereafter.

RATES ON COPRA OIL TO JERSEY CITY AND BABBITT, N. J., AND BROOKLYN, N. Y.

All of these shipments consisted of copra oil. Twenty-six moved from Baton Rouge to Jersey City prior to June 25, 1918, while 15 moved thereafter from New Orleans to the same destination and 5

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from New Orleans to Babbitt, N. J. From Baton Rouge to Brooklyn 3 moved prior to June 25, 1918, and 3 afterwards, while 2 moved from New Orleans, La., to Brooklyn after that date. A rate of 40 cents was charged on all of the shipments from Baton Rouge to Jersey City and on the shipments from Baton Rouge to Brooklyn prior to June 25, 1918. A rate of 50 cents was charged on all of the shipments from New Orleans to Jersey City and Babbitt and on the shipments from New Orleans to Brooklyn on and after June 25, 1918. All of these destinations took New York rates. The rate applicable on copra oil from Baton Rouge to New York prior to June 25, 1918, was the fifth-class rate of 50 cents and thereafter the fifth-class rate of 62.5 cents. Therefore the shipments that moved from Baton Rouge to New York points prior to June 25, 1918, were undercharged 10 cents per 100 pounds and those that moved from and to the same points thereafter 12.5 cents per 100 pounds. The rates applied from New Orleans were the applicable fifth-class rates. As shown in the appendix, a 39-cent rate applied on cottonseed oil from Baton Rouge prior to June 25, 1918, and 49 cents thereafter. The same rates were in effect from New Orleans. To show that the rates on cottonseed oil were depressed the following rates in effect prior to June 25, 1918, on that commodity are cited:

From—	To—	Distance.	Rate.
		<i>Miles.</i>	<i>Cents.</i>
Mooresboro, N. C.....	Dayton, Ohio.....	597	47.4
Albany, Ga.....	Elgin, Ill.....	687	46
Alexandria, La.....	Pittsburgh, Pa.....	1,131	45
Albany, Ga.....	Chicago, Ill.....	921	44
Atlanta, Ga.....	Duluth, Minn.....	1,217	46
Texarkana, Ark.....	Baltimore, Md.....	1,323	65.5
Shreveport, La.....	Jersey City, N. J.....	1,454	49
Texarkana, Ark.....	New York, N. Y.....	1,487	65.5
Eunice, La.....	Jersey City, N. J.....	1,527	52

Complainant again refers to the Oklahoma scale under which the rate from and to the points under consideration over the routes of movement would have been 46 cents prior to June 25, 1918, and 58 cents thereafter except from Baton Rouge to Brooklyn, which would have been 57.5 cents. The 39-cent rate on cottonseed oil prior to June 25, 1918, if applied on copra oil upon the basis of the average loading to eastern points, would result in earnings of 17.43 cents per car-mile from Baton Rouge to Jersey City and 17.41 cents per car-mile from Baton Rouge to Brooklyn over the routes of movement. The 49-cent rate based upon the same loading would have earned 21.81 cents from New Orleans to Jersey City and 21.68 cents to Babbitt, and 22.21 and 21.87 cents from Baton Rouge and New

Orleans to Brooklyn. The earnings, of course, would be considerably greater over the short routes. Complainant states that New Orleans and Baton Rouge are in a group with points in Mississippi with respect to rates on cottonseed products to New York rate points and contends that the average distance, which is more than 200 miles less than from New Orleans and Baton Rouge, should be used in determining a rate under the Oklahoma scale. The Oklahoma scale, increased in the manner previously shown, for 1,250 miles, which complainant states is the average short-line distance from the New Orleans-Baton Rouge group to the New York rate group, would be 38 cents prior to June 25, 1918. In reply to this contention defendants testified that originally the rates from New Orleans and Baton Rouge were made to meet water competition and subsequently extended to apply from less-distant points in Mississippi and that it was not the intention to apply a group basis from this territory to New York rate points.

The rates on soya-bean oil and peanut oil were reduced to the basis of the cottonseed-oil rates from and to the points under consideration January 15, 1917, more than a year prior to the shipments involved, while, as previously stated, the rates on copra oil were not reduced to the cottonseed-oil basis until February 1, 1919.

We find that the rates assailed from New Orleans to Jersey City, Babbitt, and Brooklyn, in effect on and after June 25, 1918, were not unreasonable, but that the rates from Baton Rouge to Jersey City and Brooklyn, in effect prior to June 25, 1918, were unreasonable to the extent that they exceeded 41.5 cents per 100 pounds, and further that the rate from Baton Rouge to Brooklyn, on and after June 25, 1918, was unreasonable to the extent that it exceeded 52 cents per 100 pounds.

RATES ON PALM-KERNEL MEAL TO CEDAR RAPIDS, IOWA.

Fourteen shipments of palm-kernel meal moved from New Orleans to Cedar Rapids in the latter part of 1917 at the class-B rate of 40 cents. Based upon an average loading of 56,580 pounds, the 40-cent rate yielded 22.17 cents per car-mile over the short route and 17.46 cents over the route of movement. The rate on cottonseed meal and peanut meal was 29 cents, which, upon the same average loading, would have yielded 16.07 cents per car-mile over the short route and 12.66 cents per car-mile over the route traversed by the shipments in question. Defendants cite the following rates on cottonseed meal to demonstrate that the 29-cent rate was less than reasonable and should not be the measure of the rate on palm-kernel meal:

From—	To—	Distance.	Rate.
		<i>Miles.</i>	<i>Cents.</i>
Dallas, Tex.....	Cedar Rapids, Iowa.....	828	36
Waco, Tex.....	do.....	947	36
Wilson, N. C.....	Indianapolis, Ind.....	832	32
Do.....	Chicago, Ill.....	1,006	32.8
Athens, Ga.....	Cedar Rapids, Iowa.....	1,006	32.5
Millen, Ga.....	do.....	1,149	32.5
Salisbury, N. C.....	do.....	1,151	47

This table seems to demonstrate that the cottonseed-meal rate from New Orleans to Cedar Rapids was less than the rate on that commodity between certain other points. Whether or not the transportation conditions are as favorable as between the points involved is not clearly shown. A rate of 25 cents applied from and to the points under consideration on rice bran and rice polish and the same rate applied in the opposite direction on stock feed. One of the carriers' witnesses stated that the Oklahoma scale would have been proper to apply on the shipments in question, but that, in his judgment any lower rate than on that basis would have been subnormal. Defendants cite the Oklahoma scale on cottonseed meal for the short-line distance involved, which would result in a rate of 32 cents, if 2 cents were added for a joint-line haul. The single-line rate originally prescribed by us in *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co., supra*, for 1,021 miles, the short route here under consideration, was 28 cents; and for 1,296 miles, the route of movement, 30.5 cents; but as the distances over 1,000 miles in that case would deliver traffic into Montana, Wyoming, and the Dakotas, which are higher-rated territories, we modified our order and allowed the carriers to establish higher rates than we had prescribed for those distances. The Oklahoma scale, as agreed upon between the parties, on cottonseed meal and cake for distances over 1,000 miles increases greater amounts for each successive 50 miles than the scale authorizes for distances under 1,000 miles. Ordinarily the rates for greater distances are relatively lower per mile than for shorter distances where the transportation conditions are substantially similar; but apparently the Oklahoma scale, as agreed upon for distances over 1,000 miles, recognizes a higher-rated territory of destination in the Northwest. The transportation conditions from New Orleans to Cedar Rapids are recognized to be more favorable than from Oklahoma points to Montana, Wyoming, and the Dakotas. A rate of 30.5 cents over the route of movement would have earned 13.32 cents per car-mile based on the average loading of all of the shipments of meal involved, and 16.90 cents per car-mile over the short route. The single-line distance over the Illinois Central Railroad from New Orleans to Cedar Rapids is shown to be 1,094 miles. The

single-line rate agreed upon between the parties in the *Oklahoma Cottonseed Crushers' Asso. case* for that distance was 31.5 cents.

We find that the rate assailed from New Orleans to Cedar Rapids was unreasonable to the extent that it exceeded 30.5 cents per 100 pounds when the shipments moved.

RATES ON PALM-KERNEL MEAL TO PEORIA, MORRIS, AND DECATUR, ILL.

Thirty-four shipments of palm-kernel meal moved from New Orleans to Peoria in the latter part of 1917 and 13 shipments of copra meal in the early part of 1918. Twenty-eight shipments of palm-kernel meal moved from New Orleans to Morris, Ill., and one shipment of the same commodity from New Orleans to Decatur, Ill., during the latter part of 1917. Class-D rate of 29 cents was charged on all of the shipments. The car-mile earnings based on the average weight over the routes of movement were 14.37 cents to Peoria, 15.52 cents to Morris, and 18.86 cents to Decatur. The rate on cottonseed meal from and to the points named was 22 cents, under which the car-mile earnings on the average weight of the shipments would have been 10.90 cents to Peoria, 11.78 cents to Morris, and 14.31 cents to Decatur, as shown in the appendix. Various rates are cited to show that the cottonseed-meal rate of 22 cents from New Orleans to the destinations named was depressed. The following rates on that commodity are typical:

From—	To—	Distance.	Rate.
		Miles.	Cents.
Anderson, S. C.....	Cincinnati, Ohio.....	543	29.5
Roanoke, Ala.....	St. Louis, Mo.....	629	27
Lafayette, Ala.....	do.....	633	30
Dothan, Ala.....	do.....	702	25.75
Vidalia, Ga.....	Peoria, Ill.....	949	25.25
Waco, Tex.....	do.....	953	30

The Oklahoma scale as originally prescribed by us would result in single-line rates over the routes of movement of 29 cents to Peoria, 28.5 cents to Morris, and 26.5 cents to Decatur.

We find that the rates assailed were unreasonable to the extent that they exceeded 26 cents per 100 pounds to Peoria, 25.5 cents to Morris, and 24 cents to Decatur.

RATE ON COPRA CAKE FROM ROLLING FORK, MISS., TO NEW ORLEANS, LA.

Three shipments of copra cake moved over the Yazoo & Mississippi Valley from Rolling Fork, Miss., to New Orleans, 278 miles, in August, 1918. Class-D rate of 28 cents was charged under which the car-mile earnings over the route of movement, based upon the

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average loading of the copra cake and palm-kernel meal to all points involved, would have been 56.99 cents. The rate on cottonseed meal and cake between the points named was 14.5 cents, which, under the average weight referred to, would have been 29.5 cents per car-mile. The rate charged was but 1 cent lower than the rate on cottonseed meal from New Orleans to Cedar Rapids, 1,296 miles. The carriers, however, introduced testimony seeking to show that the rate charged was, in fact, a depressed class rate, because it was somewhat lower than certain class rates applicable in other territories for like distances. Furthermore, exhibits were introduced to show that the cottonseed-meal rate from Rolling Fork to New Orleans was less than a reasonable rate. The following rates on cottonseed meal and cake are representative of those cited:

From—	To—	Distance.	Rate.
		Miles.	Cents.
Louisville, Ky.....	Versailles, Ohio.....	204	14.5
Cincinnati, Ohio.....	Bowerstown, Ohio.....	225	14
Louisville, Ky.....	Bremen, Ohio.....	244	16.5
Do.....	Cairo, Ill.....	248	16.5
Do.....	Brilliant, Ohio.....	272	14.5
Do.....	Bryan, Ohio.....	273	16.5
St. Louis, Mo.....	Goodland, Ind.....	280	14.5
Louisville, Ky.....	Adams Mills, Ohio.....	288	16.5
Do.....	Dresden, Ohio.....	292	16.5

Defendants' exhibit contains 23 rates from Louisville, Ky., Cincinnati, Ohio, and St. Louis on cottonseed meal; one lower, three equal to, and the others greater than the 14.5-cent rate on cottonseed meal from Rolling Fork to New Orleans. If the rates cited in comparison are measures of reasonable rates on cottonseed cake, then apparently the exhibit would indicate that the rate on copra cake from Rolling Fork to New Orleans should not at the very most exceed 16.5 cents, it having been conceded for the purposes of this case that the rate on copra and palm-kernel products should not exceed the contemporaneous rates on cottonseed products, provided the rates on the latter commodities between the points involved are not shown to be less than reasonable rates. The rate charged is nearly twice the rates exhibited on cottonseed cake. The Oklahoma scale of rates for single-line hauls, appropriately increased under General Order No. 28, would have resulted in a rate of 20.5 cents on cottonseed meal for the distance between the points in question and would have yielded \$115.99 per car based upon 56,580 pounds, the average of all shipments of cake and meal, and 41.72 cents per car-mile. The average loading of cottonseed meal and cake as shown in *Oklahoma Cottonseed Crushers' Assn. v. M., K. & T. Ry. Co., supra*, was between 35,000 and 40,000 pounds to destinations of the distance here involved. The three shipments under consideration averaged 66,010 pounds and would have

earned an average of \$135.32 per car-mile at a 20.5-cent rate and 48.68 cents per car-mile.

We find that the rate of 28 cents from Rolling Fork to New Orleans on copra cake was unreasonable to the extent that it exceeded 18.5 cents per 100 pounds.

SUMMARY OF FINDINGS.

The following table is a summary of the maximum rates, in cents per 100 pounds, found reasonable herein from and to the points indicated at the time of movement:

From—	To—	Rate prior to increases of June 25, 1918.	Rate after increases of June 25, 1918.
<i>Palm-kernel oil and copra oil.</i>		<i>Cents.</i>	<i>Cents.</i>
New Orleans, La.....	Kansas City, Mo.....	32.5	40.5
Do.....	St. Louis, Mo.....	26	.....
Do.....	Chicago, Ill.....	28.5	.....
Baton Rouge, La.....	do.....	28.5	.....
New Orleans, La.....	Buffalo, N. Y.....	.....	47.5
Baton Rouge, La.....	Philadelphia, Pa.....	39.5	49.5
Do.....	Jersey City, N. J.....	41.5	.....
New Orleans, La.....	do.....	.....	(1)
Do.....	Babbitt, N. J.....	.....	(1)
Baton Rouge, La.....	Brooklyn, N. Y.....	41.5	52
New Orleans, La.....	do.....	.....	(1)
<i>Palm-kernel meal and copra cake.</i>			
New Orleans, La.....	Cedar Rapids, Iowa.....	30.5	.....
Do.....	Peoria, Ill.....	26	.....
Do.....	Morris, Ill.....	25.5	.....
Do.....	Decatur, Ill.....	24	.....
Rolling Fork, Miss.....	New Orleans, La.....	.....	18.5

¹ Found not unreasonable.

We further find that complainants made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that they have been damaged thereby in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice. In complying with this rule outstanding undercharges should be taken into consideration. Our findings in the original report are modified accordingly.

Some of the shipments moved over routes that were somewhat longer than those shown as the routes of movement, while others moved over routes slightly in excess of the mileages indicated, but we are of the opinion that the distances used are quite representative of the extremes upon which to determine maximum rates upon the particular shipments under consideration.

As the findings in our original report are modified herein with respect to the rates to all of the destinations, and as a specific sum of

reparation was awarded in our original order and not affirmed herein, an appropriate order will be entered vacating the original order entered in this case.

CAMPBELL, *Commissioner*, dissenting:

I am unable to subscribe to the views of the majority in modifying our former decisions in these cases. It is conceded that copra and cottonseed products should have the same rates. The basis of rates on cottonseed products which the majority here find subnormal for application to copra and its products was voluntarily maintained by the carriers for about 25 years. The principal objections to our former decisions are made by the director general, who had ample opportunity to advance any rates that were deemed really subnormal. We reached our prior decisions after considering the same contentions now presented by defendants. Under the circumstances, it should require real substantial evidence to find such rates subnormal, and to my mind there is not sufficient evidence in the records to support such a finding nor to warrant any modification of our previous decisions.

Assuming that there is sufficient evidence to support the findings of the majority, I can not approve the scale of rates they adopt. They take the scale prescribed by us on cottonseed oil in *Oklahoma Cottonseed Crushers' Asso. v. M. K. & T. Ry. Co.*, 39 I. C. C., 497, for distances up to 600 miles, and continue the rate of progression of 0.5 cent for each 25 miles for distances up to 1,661 miles. When we originally prescribed this scale there was no movement of oil over 600 miles. There was a movement for longer distances on other cottonseed products, and we prescribed in the same case a scale thereon with the rate of progression of 0.5 cent for each 25 miles up to and including 700 miles and of 0.5 cent for each 50 miles from 700 to 1,500 miles. The joint-line arbitrary of 2 cents allowed under that scale is properly dropped and a certain percentage under the scale is correctly used in the territory here considered in which traffic conditions are admitted to be more favorable, but it is axiomatic that the rate of progression shall decrease as the distance increases. It is my firm belief that if this scale is to be used as an underlying basis for rates on these products, with allowances for differences in transportation conditions in different sections of the country, then the rate of progression should be 0.5 cent for each 25 miles up to 700 miles, 0.5 cent for each 50 miles from 700 to 1,500 miles, and further decreased for distances over 1,500 miles.

I am authorized to state that COMMISSIONER AITCHISON joins in this dissent.

APPENDIX.

	Distance.		Rates.		Revenue per car.	Car-mile earn- ings.	
	Short line.	Route trav- ersed.	Prior to June 25, 1918.	After June 24, 1918.		Short line.	Route trav- ersed.
<i>Palm-kernel oil and copra oil (average load 67,050 pounds).</i>							
New Orleans, La., to Kansas City, Mo.:	<i>Miles.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
Palm-kernel oil.....	868	953	41	.....	\$274.82	31.66	28.84
Cottonseed oil.....	868	953	30	.....	201.09	23.17	21.1
Copra oil.....	868	953	.....	47.5	318.39	36.68	33.41
Cottonseed oil.....	868	953	.....	37.5	251.36	28.96	26.38
New Orleans, La., to St. Louis, Mo.:							
Copra oil.....	711	790	40	.....	268.12	37.71	33.94
Cottonseed oil.....	711	790	22	.....	147.47	20.74	18.67
New Orleans, La., to Chicago, Ill.:							
Copra oil.....	919	919	47	.....	315.04	34.28	34.28
Cottonseed oil.....	919	919	27	.....	180.98	19.69	19.69
Baton Rouge, La., to Chicago, Ill.:							
Copra oil.....	911	911	47	.....	315.04	34.58	34.58
Cottonseed oil.....	911	911	27	.....	180.98	19.87	19.87
<i>Palm-kernel oil and copra oil (average load 73,480 pounds).</i>							
New Orleans, La. to Buffalo, N. Y.:							
Palm-kernel oil.....	1,281	1,452	.....	59	433.53	33.84	29.86
Cottonseed oil.....	1,281	1,452	.....	43	315.96	24.67	21.76
Baton Rouge, La., to Philadelphia, Pa.:							
Copra oil.....	1,262	1,550	48	.....	352.70	27.95	22.75
Cottonseed oil.....	1,262	1,550	37	.....	271.88	21.54	17.54
Copra oil.....	1,262	1,550	.....	60	440.88	34.94	28.44
Cottonseed oil.....	1,262	1,550	.....	46.5	341.66	27.07	22.04
Baton Rouge, La., to Jersey City, N. J.:							
Copra oil.....	1,353	1,644	50	.....	367.40	27.15	22.35
Cottonseed oil.....	1,353	1,644	39	.....	286.57	21.18	17.43
New Orleans, La., to Jersey City, N. J.:							
Copra oil.....	1,371	1,651	.....	50	367.40	26.8	22.25
Cottonseed oil.....	1,371	1,651	.....	49	360.05	26.26	21.81
New Orleans, La., to Babbitt, N. J.:							
Copra oil.....	1,381	1,661	.....	50	367.40	26.6	22.12
Cottonseed oil.....	1,381	1,661	.....	49	360.05	26.07	21.68
Baton Rouge, La., to Brooklyn, N. Y.:							
Copra oil.....	1,355	1,646	50	.....	367.40	27.11	22.32
Cottonseed oil.....	1,355	1,646	39	.....	286.57	21.15	17.41
Copra oil.....	1,355	1,646	.....	62.5	459.25	33.89	27.9
Cottonseed oil.....	1,355	1,646	.....	49	360.05	26.57	21.87
New Orleans, La., to Brooklyn, N. Y.:							
Copra oil.....	1,373	1,653	.....	50	367.40	26.76	22.28
Cottonseed oil.....	1,373	1,653	.....	49	360.05	26.22	21.78
<i>Palm-kernel meal and copra meal (average load 58,530 pounds).</i>							
New Orleans, La., to Cedar Rapids, Iowa:							
Palm-kernel meal.....	1,021	1,296	40	.....	226.32	22.17	17.46
Cottonseed meal.....	1,021	1,296	29	.....	164.08	16.07	12.66
New Orleans, La., to Peoria, Ill.:							
Palm-kernel meal and copra meal.....	¹ 839	1,142	29	.....	164.08	19.56	14.37
Cottonseed meal.....	839	1,142	22	.....	124.48	14.84	10.9
New Orleans, La., to Morris, Ill.:							
Palm-kernel meal.....	803	² 1,057	29	.....	164.08	18.37	15.52
Cottonseed meal.....	803	1,057	22	.....	124.48	13.94	11.78
New Orleans, La., to Decatur, Ill.:							
Palm-kernel meal.....	761	870	29	.....	164.08	21.56	18.86
Cottonseed meal.....	761	870	22	.....	124.48	16.36	14.31
Rolling Fork, Miss., to New Orleans, La.:							
Copra cake.....	278	278	.....	28	158.42	56.99	54.99
Cottonseed cake.....	278	278	.....	14.5	82.04	29.51	29.51

¹ Route of movement of some of the shipments.² Shipments moved various routes.

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No. 12688.
REPUBLIC OF FRANCE
v.
ERIE RAILROAD COMPANY.

Submitted March 15, 1922. Decided April 10, 1922.

Rate charged on certain carloads of steel billets, forged, from Hammond, Ind., to New York, N. Y., for export, found not to have been unreasonable or otherwise unlawful. Complaint dismissed.

C. R. Marshall for complainant.

Marion B. Pierce for defendant.

REPORT OF THE COMMISSION.

LEWIS, Commissioner:

The issue here presented was made the subject of a proposed report by the examiner. Exceptions were filed by complainant to which defendant replied.

By complaint filed April 4, 1921, the Republic of France, through its director of administrative services in the United States, alleges that the rate charged for the transportation in November and December, 1917, of a number of carloads of steel billets from Hammond, Ind., to New York, N. Y., for export, was unreasonable and unlawful, in violation of sections 1 and 6 of the interstate commerce act. Reparation is asked.

The shipments consisted of 59 carloads of round steel bars over 3 inches in diameter, shaped by forging, and moved from Hammond between November 6, 1917, and December 10, 1917, via the Erie Railroad, consigned to the forwarding agent or other official of the French Government at New York for export. Charges were originally collected on the basis of a rate of \$5.30 per long ton, applicable on round billets not less than 3 inches in diameter, rough rolled and not smooth or surface finished, which were to be reheated for the purpose of rerolling, forging, hammering, or piercing, and could be transported in open cars without damage by exposure to the weather. Subsequently bills for undercharges were rendered based on a rate of 32.5 cents per 100 pounds, applying on forgings or castings. This was the rate applicable on all articles of iron and steel manufacture, not otherwise specifically provided for in the official classification, when shipped in the rough, i. e., not advanced in the stage of manu-

facture beyond the casting, forging, or stamping process, and which required further work to be done on them before becoming finished articles.

Complainant contends that the articles shipped were billets and as such were entitled to the rate of \$5.30 per gross ton, or if properly included within the description applicable on forgings and castings that the rate of 32.5 cents per 100 pounds was unreasonable to the extent that it exceeded \$5.30 per long ton. The bills for undercharge were ultimately paid by the French Government, although it appears that under a contract with the manufacturer the obligation to pay all charges from the point of shipment to the port of New York rested, as to certain of the shipments embraced in the complaint, upon the latter.

In September and December, 1916, the Republic of France entered into two contracts with the Pollak Steel Company calling for the manufacture by the latter of a certain quantity of "steel billets for shells, forged," and "special steel billets, forged." These billets were to be of two sizes, 160 millimeters and 225 millimeters in diameter, equivalent to 6.3 inches and 8.8 inches, respectively, and were to conform to the French specifications for shell steel. The specifications provided, among other things, that the bars should be of rolled or forged steel of the best quality, free from defects, and sufficiently free from scale after forging to permit thorough inspection of the surface.

In the fulfillment of these contracts the Pollak Steel Company purchased the raw material in the form of square steel billets, which are usually made by passing ingots through rolls, and by reheating and forging under a trip hammer converted them into forged steel of the size and shape required. This process was in accordance with the contract, which called for billets, forged. Forging consists in shaping metal by the application of pressure, or by means of repeated blows. It results in a better and more uniform crystallization of the material, and therefore a higher quality of steel than is made by the rolling process. The Pollak Steel Company had no rolls of the sizes necessary to manufacture these billets, nor were they in use generally in other plants.

It is clear that the rate of \$5.30 per long ton, which applied on billets, rough rolled, was erroneously collected in the first instance on the shipments herein under consideration, and that the rate of 32.5 cents, which applied on forgings, was the applicable rate.

The second question to be determined is whether the rate of 32.5 cents on forged steel billets was unreasonable in view of the lower rate on rolled billets. Complainant argues that from a transportation standpoint the articles are identical, with the possible exception

of a slight difference in value. It points out that the billets in question were manufactured from raw or unfinished materials, were not smooth or surface finished, were commercially known as billets, and could be and in fact were transported in open cars without damage from exposure to the weather.

A distinction between billets and forgings is recognized in official classification, which rates the former sixth class and the latter fifth class. The fifth-class rate in effect at the time of movement was 36 cents per 100 pounds and the sixth-class rate 30 cents. The rate of 32.5 cents charged was therefore lower than the fifth-class rate and but slightly higher than the sixth-class rate. The billet rate applied on such articles as old axles, wheels, and rails, ingots, scrap iron having value for remelting purposes only, unfinished sheet bars, and material of like nature, whereas the rate of 32.5 cents applied on a large list of articles of higher grade. The steel billets manufactured as described in the record were of a nature that would properly place them among the articles taking the higher rate. Complainant relies solely upon a comparison with the rate on rough rolled billets to support its allegation of unreasonableness. That rate yielded earnings of 4.84 mills per net ton-mile as compared with earnings of 6.65 mills under the rate charged.

We find that the rate charged on the shipments was not unreasonable or otherwise unlawful, and the complaint will be dismissed.

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No. 10599.¹

PROCTER & GAMBLE COMPANY

v.

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY COMPANY, DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted January 11, 1922. Decided March 14, 1922.

Findings that rates on coconut oil, in tank-car loads, between Ivorydale, Ohio, and Macon, Ga., were unreasonable and that reparation should be awarded, affirmed. Original report, 58 I. C. C., 108.

Hugo Ignatius and *W. E. Willey* for complainant.

John F. Finerty, *Thomas M. Woodward*, and *Alex M. Bull* for director general.

W. N. McGehee for other defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING.

DANIELS, *Commissioner*:

Exceptions to the report proposed by the examiner were filed by complainant, and the case was orally argued. We have reached conclusions differing from those recommended by him.

In our original report, 58 I. C. C., 108, we found that the fifth-class rates of 56 cents on coconut oil, sometimes called copra oil, in tank-car loads from Ivorydale, Ohio, to Macon, Ga., and in the opposite direction were unreasonable during the period between October, 1917, and April, 1918, to the extent that they exceeded the contemporaneous rates on cottonseed oil. The southbound commodity rate on cottonseed oil was 31 cents per 100 pounds and the northbound rate 27 cents. On June 3, 1918, subsequent to the movement of complainant's shipments, the 27-cent rate was made applicable on coconut oil northbound and on February 1, 1919, the 31-cent rate, appropriately increased under General Order No. 28 of the Director General of Railroads, was made applicable on coconut oil southbound.

When the proceeding in *Southport Mill v. Director General*, 55 I. C. C., 154, was reopened for further hearing the instant case, which was to some extent based upon that case, was also reopened. Complainant presented no further evidence, and to a great extent defendants' evidence was the same as presented at the further hearing of *Southport Mill v. Director General*, 68 I. C. C., 352. Defendants recite the history of the coconut-oil industry in this coun-

¹ This complaint also embraces No. 10600, *Same v. Same*, 68 I. C. C.

try, together with the general statement that cottonseed-oil rates are subnormal and should not be used as a measure of the rates on coconut oil. The same facts are set forth in *Southport Mill v. Director General, supra*, and need not be repeated here. It was testified that the rates on coconut oil were not reduced because they were deemed to be unreasonable by the carriers, but the reduction was for the purpose of making the rates on vegetable oils uniform. The rates on the commodity in question are still on the cottonseed-oil basis. Complainant states that the movement from Ivorydale to Macon developed so quickly that request for lower rates was not lodged with the carriers prior to the shipments. On December 31, 1917, prior to the movement northbound, complainant requested a commodity rate on coconut oil from Macon to Ivorydale, but it was not established until June 3, 1918, nearly two months after the shipments moved.

In *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.*, 35 I. C. C., 94; 39 I. C. C., 497; and *Oklahoma Cottonseed Crushers' Asso. v. A., T. & S. F. Ry. Co.*, 42 I. C. C., 571, January 8, 1917, we prescribed a scale of rates for distances to and including 600 miles on cottonseed oil from Oklahoma points to Kansas City and other northern points. The rate for 578 miles, the distance here involved, under that scale would be 27 cents for a joint-line haul, which rate was equal to the commodity rate on cottonseed oil from Macon to Ivorydale. Defendants have undertaken to show that the cottonseed-oil rate was less than reasonable, but they have not shown that the transportation conditions are less favorable between Macon and Ivorydale than from Oklahoma to Kansas City and other points. In *Peet Brothers Mfg. Co. v. Director General*, 63 I. C. C., 345, we found nothing on the record to indicate that the Oklahoma scale was unreasonably low and awarded reparation on shipments from Prague, Okla., to Kansas City in July, 1918, on that basis. In *Procter & Gamble Co. v. A. C. R. R. Co.*, 64 I. C. C., 213, decided October 4, 1921, we prescribed for the future from points in Oklahoma, Arkansas, and Louisiana to Dallas, Tex., that scale of rates, increased by 25 per cent under General Order No. 28, and again by 35 per cent as authorized by us on July 29, 1920. Rates somewhat lower than the Oklahoma scale were found reasonable from New Orleans and Baton Rouge, La., to eastern points upon further hearing in *Southport Mill Co. v. Director General, supra*.

Upon all of the facts now before us our findings in the original case are affirmed.

No. 12969.

DIVISIONS RECEIVED BY BRIMSTONE RAILROAD &
CANAL COMPANY.

Submitted February 9, 1922. Decided April 4, 1922.

1. Brimstone Railroad & Canal Company found to be a common carrier of property subject to the interstate commerce act and may lawfully participate in joint rates with other common carriers or have its charges on interstate shipments absorbed under appropriate tariff provisions.
2. The divisions received by the Brimstone Railroad & Canal Company found to be unjust, unreasonable, inequitable, and to the extent that they exceed the cost of the service and a fair return upon the property of that company held for and used in service of transportation for the public generally, are excessive and, in effect, a rebate to the Union Sulphur Company.
3. The out-of-line or back-haul movement to the track scale should not be included in computing the distance upon which the divisions to be received by the Brimstone Railroad & Canal Company are determined.
4. Respondents required to make a study of the cost of the service performed by the Brimstone Railroad & Canal Company, after which the case will be set for further hearing.

James T. Kilbreth, B. F. Martin and W. M. Barrow for Brimstone Railroad & Canal Company; *Denegre, Leovy & Chaffe, F. H. Wood,* and *J. R. Bell* for Southern Pacific Company; *Frank H. Moore* and *George H. Muckley* for Kansas City Southern Railway Company; and *J. S. Hershey, J. W. Terry,* and *G. B. Ross* for Gulf, Colorado & Santa Fe Railway Company, Atchison, Topeka & Santa Fe Railway Company, and Panhandle & Santa Fe Railway Company.

W. M. Barrow for Louisiana Public Service Commission.

Wilbur La Roe, jr., and *Clark & La Roe* for Texas Gulf Sulphur Company.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

This proceeding was instituted upon our own motion to investigate the justness, reasonableness, and equitableness of the divisions of joint rates received by the Brimstone Railroad & Canal Company, hereinafter called the Brimstone. The Kansas City Southern Railway Company and the Southern Pacific Company (Louisiana Western Railroad Company), direct connections of the Brimstone, were made respondents together with the Brimstone.

In No. 12773, *Union Sulphur Co. v. Ahnapee & Western Ry. Co.*, not yet decided, rates on crude sulphur, in carloads, from Sulphur Mine, La., where the Union Sulphur Company, hereinafter called the proprietary company, mines brimstone and sulphur, to all points on and east of the Mississippi River, are attacked as unreasonable, unjustly discriminatory, and unduly preferential of sulphur mines at Gulf Hill and Bryanmound, Tex. The Texas Gulf Sulphur Company, which has a sulphur mine at Gulf, 3.5 miles from Gulf Hill, on the Gulf, Colorado & Santa Fe Railway, intervened in No. 12773 and participated in the instant case. Its interest here is to prevent the proprietary company from obtaining an unlawful advantage through its ownership and control of the Brimstone. The Texas Gulf Sulphur Company receives no allowance for the services it performs for carrying property between its mine and the line of the Gulf, Colorado & Santa Fe. The latter was represented in this proceeding to aid in the development of the facts and because the Sulphur Company may ask an allowance. It urges that the Brimstone is a plant facility of the proprietary company and entitled to no divisions or allowances whatsoever; but that if it is entitled to any division or allowance, the amount should not exceed \$4.50 per car, the switching charge or division prescribed by us for over 1 mile to 3 miles in our sixth supplemental order in *The Tap Line case*, 31 I. C. C., 490.

The Louisiana Public Service Commission, also represented in this proceeding, asks the recognition of the Brimstone as a common carrier which may lawfully participate in joint rates and receive just, reasonable, and equitable divisions thereof.

The Kansas City Southern submits that the divisions of the Brimstone are just and reasonable, both in the light of *The Tap Line case, supra*, and as compared with divisions received by other short lines in the Southwest.

The Southern Pacific argues that whatever may be the proper return to the Brimstone in the aggregate, the divisions allowed should be uniform and afford equal opportunity between the Kansas City Southern and the Southern Pacific to secure the traffic. Although the distance from the plant of the proprietary company to the interchange tracks of the Southern Pacific is considerably less than to the interchange tracks of the Kansas City Southern, the divisions received by the Brimstone are the same in both instances, having been revised to uniformity by the United States Railroad Administration effective April 1, 1919.

The Brimstone is in southwestern Louisiana, about 12 miles west of Lake Charles, La. Sulphur Mine is 2.5 miles from Sulphur, La., a small station on the Southern Pacific, about 7.5 miles west of

Westlake, La. A map of the Brimstone and its connections is shown in *Oil from Texas Ports to Sulphur Mine*, 63 I. C. C., 74, at page 78. The Brimstone was incorporated May 27, 1905, under the laws of the State of Louisiana, to conduct a general railroad business and to construct and operate two lines of railroad and a canal, being given certain powers incident thereto. It was authorized to construct a railroad from Brimstone, La., a point in the parish of Calcasieu, on the main line of the Southern Pacific, to Sulphur Mine; another to the Louisiana-Texas border; and a canal from Brimstone or Sulphur Mine to the Sabine River or to the Calcasieu River. The line from Brimstone, hereinafter called Brimstone Junction, to Sulphur Mine, thence to Lockport Junction, now called Mossville, La., on the line of the Kansas City Southern, was constructed in the summer of 1905 and operated early the next year. The second line has not been constructed. The canal project was abandoned late in 1906, after more than \$100,000 had been expended thereon. Of the 113.38 acres of property acquired by the Brimstone for a right of way, 38.54 acres were purchased from the proprietary company and 74.79 acres from other owners. The present standard-gauge main line of the Brimstone extends 0.25 mile in a northerly direction from Brimstone Junction, where 0.8 mile of track owned by the Southern Pacific is used jointly by that company and the Brimstone for the interchange of traffic, to a point of connection with tracks of the proprietary company just south of the highway between Vinton and Lake Charles, La., thence easterly to Mossville, where 2.86 miles of track owned and maintained by the Kansas City Southern, are used jointly by the two companies for the movement of sand and shells. There are two divisions of the main line—the Brimstone, 0.75 mile, and the Lockport, 6.64 miles—the dividing line being 0.42 mile northeast of the point of connection between the Brimstone and the tracks of the proprietary company. In addition to the main line, the Brimstone owns 1.68 miles of spurs or sidings. The principal spurs are on the Lockport division, and are called Portietown pipe spur, De Quincy Road spur, and K. & M. Warehouse spur, the latter being used by the Krause & Managan Lumber Company and other shippers. The main tracks of the Brimstone have 90-pound rails, while some of the spurs or sidings have only 60-pound rails.

The Portietown pipe spur was used for the unloading of pipe during the war and is now used to serve the public in its vicinity. These and other spurs are available for use by the general public and have been used principally by the parish of Calcasieu in unloading road-building materials, aggregating 2,000 carloads since 1912. The unloading on the Brimstone of materials for public roads saved wagon hauls from Sulphur of from 0.5 to 0.75 mile. It is estimated

that in the near future at least 1,000 carloads of sand, gravel, and cement will be needed for the construction and maintenance of roads near the Brimstone. The Brimstone also serves the Houston River Canal Company, which has a warehouse at the point of connection between the Brimstone and the tracks of the proprietary company, near which a team track is situated; farmers located along its Lockport division; consignees of carload freight on the interchange tracks at Mossville; an employees' general merchandise cooperative store not available to the public; employees of the proprietary company and of the Brimstone occupying about 100 houses at or near Sulphur Mine; and about 3,000 other persons residing along its line. A portion of the line of the Brimstone parallels the line of the Southern Pacific, but the nearest stations of the latter company having warehouse facilities are at Sulphur and Westlake.

The efficiency of the service rendered by the Brimstone is commended by the Krause & Managan Lumber Company, the Houston River Canal Company, and the engineer engaged in road building in the vicinity of Brimstone.

The Brimstone operates without charge over 6.9 miles of the proprietary company's tracks. The tracks of the proprietary company, 9.61 miles, lying immediately north of the Vinton-Lake Charles highway, are laid to the sulphur storage bins, the track scales, warehouses, train shed, car-repair shop, forge shop, machine shop, water spout, locomotive-fuel station, and various other points near the mines of the proprietary company, as well as to another connection with the Lockport division of the Brimstone. The track scales of the proprietary company are not under the supervision of the Western Weighing and Inspection Bureau.

The Brimstone has no repair shop, roundhouse, water wells, water tanks, pumps, or water-service equipment. Repairs to equipment, which involved an expenditure of nearly \$73,000 in 1920, were and are made by the proprietary company at cost plus 30 per cent, and one of the track crews of the proprietary company maintains the roadway and track at actual cost to the Brimstone. These latter expenses amounted to about \$29,000 in 1920. Water is obtained from the proprietary company without charge. The train shed of the proprietary company is used as the roundhouse of the Brimstone. A portion of one of the warehouses of the proprietary company is used, without charge, as the freight station of the Brimstone for the receipt and delivery of less-than-carload freight for the public; the tracks of the proprietary company adjacent thereto are used as public team tracks of the Brimstone, and an employee of the proprietary company acts as the agent of the Brimstone. The Brimstone uses a portion of the office of the proprietary company at a

rental of \$5 per month, including light, heat, and janitor service, the stenographic and clerical assistants employed there and paid by the proprietary company being used by the Brimstone. The yardmaster at Sulphur Mine acts in that capacity for both companies, but is paid by the proprietary company. Other than the secretary, officials of the Brimstone are officials of the proprietary company, and the former company pays certain proportions of their salaries. The Brimstone purchases its fuel oil from the proprietary company. Supplies, other than steel rails, crossties, and materials used in extension work, are obtained from the proprietary company at cost, as the latter can purchase many of them in large quantities cheaper than the Brimstone could purchase the smaller quantities used by it.

The Brimstone has a track scale located on its Brimstone division about 300 feet from its connection with the tracks of the proprietary company, where the weighing for the purpose of assessing freight charges is done by an authorized weighmaster of the Western Weighing and Inspection Bureau, and his compensation is paid by the Brimstone. All other employees, such as engine crews, are separate employees of the Brimstone. The Brimstone estimates that in order to provide itself with the proper facilities to serve the public without using the terminal facilities of the proprietary company now used without compensation, it would be compelled to make a capital expenditure of \$182,500 for about 7 miles of track at \$15,000 per mile; a shop, \$50,000; roundhouse, \$10,000; water wells, \$2,500; water tanks, pumps, and water-service equipment, \$2,500; fuel tanks, pumps, and equipment, \$2,500; and an additional switch engine, \$10,000. It also estimates that its operating expenses for the maintenance of these facilities would be \$22,324 per year. The free use of the facilities of the proprietary company is a long-standing practice.

The Brimstone owns 8 standard locomotives and 156 gondola coal cars of 100,000-pound capacity. The coal cars are especially adapted for and exclusively used in the carriage of sulphur to Sabine, Tex. The proprietary company owns 7 standard-gauge locomotives, 15 flat cars, 10 box cars, and 75 dump cars.

Sulphur moves in trainloads from Sulphur Mine to Sabine, 78.7 miles, at the rate of about 25 cars per day. The sidetracks and locomotive equipment there are provided by the Southern Pacific (Texas & New Orleans Railroad), which performs the switching. The proprietary company owns a terminal at Sabine for the handling of sulphur for transshipment.

Empty cars for sulphur loading are moved by the Brimstone from the junctions to the sulphur storage bins about a half mile from the point of connection, whence they are moved by the power of the pro-

proprietary company to the sulphur vats for loading, after being weighed light on the proprietary company's scales near the box-car loading plant. After the cars are loaded they are again weighed by the proprietary company for the purpose of avoiding complaint of over or under weight. The cars are then moved by the Brimstone about 0.5 mile over the line of the proprietary company to the point of connection with the Brimstone, thence to the track scales of the Brimstone about 0.5 mile for weighing, then back 0.75 mile over the line of the Brimstone to the junction, and 0.5 mile over the interchange track of the Southern Pacific at Brimstone Junction. The movement in the reverse direction is the same. The initial movement to Mossville is the same to the scales, except that the cars, after being weighed by the Brimstone continue in the same direction en route to Mossville, a total distance for the round trip of the loaded and empty car of 15.28 miles. Divisions are always made for the loaded movement only. Fuel oil is moved to a point about 0.5 mile directly north of the point of connection of the Brimstone and the tracks of the proprietary company, and is placed opposite the oil-pumping station. The average haul to both junction points, loaded and empty, is stated to be 9.39 miles. The average haul of revenue freight over the Brimstone in 1920 was 0.94 mile, which does not include movements over the tracks of the proprietary company, nor the movements on the interchange tracks at the junction points. Rice originating on the Lockport division at the warehouse of the Krause & Managan Lumber Company is hauled southwest toward Brimstone Junction 4.8 miles and, after being weighed, is hauled back southeast 6.64 miles to Mossville. General merchandise for the proprietary company and for the public is delivered to the warehouse used as its freight station by the Brimstone. The average haul between independent industries, team tracks, the freight station, and the junctions with the trunk-line carriers, is 6 miles.

In *Louisiana & Pine Bluff Divisions*, 40 I. C. C., 470, we held that an out-of-line or diverted movement to a track scale should not, under the second supplemental report in *The Tap Line case*, be included in computing the distance upon which the division that a tap line may receive is to be determined; that decision was adhered to on reargument, 53 I. C. C., 475, and sustained as not unreasonable or arbitrary in *Louisiana & P. B. Ry. Co. v. United States*, 274 Fed., 372, and by the Supreme Court on November 7, 1921. The latter decision is not yet reported. The Brimstone contends that the track scales are located as near Brimstone Junction as physical conditions will permit and that greater efficiency is obtained by their being located there than if they were located nearer to Mossville. The weight obtained by the originating carrier ordinarily is accepted as the basis of settle-

ment between the consignor and consignee and for the freight charges. No charge is made for the service of weighing.

The proprietary company performs its intraplant switching and, sometimes, when convenient, the power of the proprietary company is used to move traffic between the plant and the interchange tracks of connecting carriers. The handling of the traffic of the proprietary company by the Brimstone is not incident to any manufacturing process, and the movements to the junction points are made to accommodate the schedules of the trunk-line connections.

The outbound tonnage for the year ended December 31, 1920, consisted of 17,314 cars of sulphur, of which 4,045 cars moved all rail; 21 cars of forest products; 14 cars of rice; 2 cars of crude petroleum; 25 cars of iron and steel articles; 4 cars of household goods; and 2 cars of miscellaneous commodities. The inbound tonnage for that year consisted of 1,065 cars of crude petroleum and 131 carloads of grain, hay, coal, forest products, iron and steel articles, household goods, and other commodities. The crude petroleum is used by the proprietary company. The Brimstone originated 36 tons and received 323 tons of less-than-carload freight during that year. Slightly over 98 per cent of the carload tonnage outbound and inbound, and 73 per cent of the less-than-carload tonnage, was for the proprietary company.

For the first six months of 1921, the Brimstone forwarded via the Southern Pacific 419 cars of sulphur which moved all rail; 2,621 cars which moved to Sabine thence by water; and received, during that period, 3,352 cars of fuel oil via that line. No fuel oil was received during that period via the Kansas City Southern, but 358 cars of sulphur were forwarded over its line. During the same period 7,408,767 pounds of various commodities were moved by the Brimstone for shippers other than the proprietary company. For the carriage of 958,438.74 tons, or 18,436 cars, of all commodities, all but 6,695 tons of which, or 186 cars, was interstate, between the plants of the proprietary company and the junctions with the trunk-line carriers, the Brimstone received \$243,163.63, or an average of \$13.19 per car. For the calendar year 1920 the average revenue per ton of freight amounted to 0.25827 cent; the operating revenues 96.08 cents per train-mile; operating expenses, 75.55 cents per train-mile; and the operating ratio 78.63. The average operating expenses and taxes alone were, on all freight, \$11.57 per car. The average earnings on sulphur, based on the average on all freight, were about \$13.72 per car. The average earnings per car on crude oil during that year were \$8.39. The operating expenses per mile of road of the Brimstone for the calendar year 1920 were \$26,425; for the United States for the 10 months ended October, 1920, for 200 Class-I roads, \$20,550.

The Brimstone is taxed by the tax commission of the State of Louisiana upon a higher rate than if it were a plant facility, and

in some instances at a higher rate than are common carriers in Louisiana. It complies with Federal and State laws and files annual reports and tariffs. It abides by some of the rules of the American Railway Association, especially in the settlement of freight claims, but is not a member of that association. It assesses demurrage for its own account, having an average agreement with the proprietary company. It pays and receives per diem on foreign-line equipment, having had a credit balance of nearly \$5,000 for hire of freight cars in 1920. It receives mileage of 1.5 cents per mile on its own freight cars when on foreign lines. It does not engage in the carriage of passengers, mail, or express. Bills of lading are issued by it, the traffic being handled under through-waybill arrangements, and the freight charges are settled monthly with the trunk-line connections in accordance with accounting rules.

The capital stock authorized by the charter of the Brimstone was \$100,000, of which \$31,000 was issued for cash at par. On January 22, 1914, the stockholders authorized an increase of the capital stock to \$200,000, 2,000 shares, par value \$100 each, 1,995 of which are owned by the proprietary company, the remainder by directors, three of whom are officials of both the Brimstone and the proprietary company. The Brimstone has no funded debt. Its demand notes, used in financing the construction of the railroad and of the canal, have been liquidated, and a 100 per cent dividend was declared in 1914 immediately upon the issuance of the remainder of the capital stock, \$84,500. Dividends of 60 per cent in 1917 and 40 per cent in 1918 have been declared, and a credit balance in profit and loss of \$165,378.82 was shown in the Brimstone's annual report as of December 31, 1920.

The book value of the various classes of property of the Brimstone as of December 31, 1920, which is original cost plus subsequent additions and betterments, follows: Road, \$126,490.26; equipment, \$370,155.60; canal right of way, \$13,239.14; general expenditures, \$85.50; materials and supplies, \$10,076.96; total property investment, \$520,047.46. As of August 31, 1921, the total assets are shown as \$641,569.69. The Louisiana Tax Commission placed the valuation of the Brimstone for assessment purposes as \$425,323; main line, \$20,000 per mile; sidetrack, \$4,000 per mile; equipment, \$261,000. The Brimstone had an engineer value the property as of December 31, 1920, using the inventory notes of our bureau of valuation, showing quantities as of June 30, 1918, to which were applied price levels of 1914, the year adopted by the bureau of valuation in the valuation of all carrier property. This engineer's estimate of the cost of reproduction new as of June 30, 1918, based on the 1914 price level, for road, equipment, and general expenditures, not including working capital, materials and supplies, cost of 16 miles of canal

right of way, or anything for appreciation or for the Brimstone as a going concern, is \$266,852. This figure is increased by adding the working capital, materials and supplies, and the cost of the canal right of way, to \$316,297; and by additions and betterments since June 30, 1918, to December 31, 1920, to \$525,772. Based on his study of the increase, 1920 over 1914, of materials and supplies and of labor, the cost as of June 30, 1918, has been increased 110 per cent, except for land for transportation purposes, thus making the cost of reproduction new of the Brimstone as of December 31, 1920, \$811,585. To what extent this amount should be decreased to allow for depreciation can not be stated at this time, although the amount of reserve for accrued depreciation on December 31, 1920, was nearly \$80,000.

The railway operating revenues of the Brimstone for 1920 were \$248,363; operating expenses, \$195,287.20; taxes, \$19,691.64; leaving a railway operating income of \$33,384.14, which, with the additions of income from hire of equipment, income from unfunded securities and accounts, and miscellaneous income, total \$6,204.01, gave a net income of \$39,588.17. The operating revenues of the Brimstone for the six months' period ended June 30, 1921, were from freight service, \$96,091.60; demurrage, \$241; total, \$96,332.60. Operating expenses were \$73,592.95, leaving a net revenue from railway operations of \$22,739.65, which, less tax accruals of \$3,810.48, and plus nonoperating income of \$3,977.04, afforded a net income, to be transferred to profit and loss, of \$22,906.21.

The Brimstone has been a participant in joint rates for a number of years; it concurs in and is a party to various tariffs of the Kansas City Southern and the Southern Pacific and to various agency tariffs. As part of the general revision during the period of Federal control by a committee of traffic officers of the United States Railroad Administration of the divisions of trunk lines and short lines, no member of the committee having been an official of either the Kansas City Southern or of the Southern Pacific, the divisions of the Brimstone, with those carriers and their connections, were revised. The present divisions are:

Sulphur, when destined Port Arthur, Sabine, or Galveston, Tex., New Orleans, Gretna, or Algiers, La., for coastwise movement or for export, 27 cents per gross ton, equivalent to 1.2 cents per 100 pounds;
 Sulphur, when destined points other than those shown above, 8 cents per 100 pounds;
 Fuel oil, 1.4 cents per 100 pounds;
 Brick, coal, lumber, and stone, 2.7 cents per 100 pounds;
 Cement, 3.4 cents per 100 pounds;
 Logs, destined Westlake, La., \$5 per car;
 All other carload traffic, 4 cents per 100 pounds;
 Merchandise, less than carloads, 18.5 cents per 100 pounds.

The divisions include the increases of 35 per cent under the general increases of 1920. The divisions, thus increased, are those established by the United States Railroad Administration, except that on fuel oil from Shreveport, La., to Sulphur Mine, the Brimstone is allowed 2 cents per 100 pounds; on fuel wood in carloads from Toomey, La., to Sulphur Mine, it is allowed 1.5 cents per 100 pounds; and on shipments of crude and fuel oil originating at Rodessa La., and South Mansfield, La., it is allowed 2 cents per 100 pounds.

These divisions are contrasted by the respondents with those revised by the United States Railroad Administration for various tap lines operating in southwestern territory, which do not originate sulphur, 98 per cent of which is mined at Sulphur Mine, Gulf Hill, and Bryanmound. Although the operating conditions on these roads are not clearly shown of record, the physical conditions on the majority of them were described in *The Tap Line case*, 23 I. C. C., 277 and 549. The railroad administration revised the divisions of each road according to the facts in each case. It will suffice to say that the divisions exhibited of these roads in some instances are higher and in other instances are lower than those of the Brimstone. The sixth supplemental order in *The Tap Line case*, issued September 20, 1920, authorized switching charges of \$4.50 per car for over 1 mile to 3 miles and 3 cents per 100 pounds for over 3 miles to 10 miles on interstate shipments of lumber and forest products. While the principles announced in *The Tap Line cases*, 234 U. S., 1, have been given effect in determining the common-carrier status of industrial railways, in determining the divisions of industrial railways, each case is decided upon the facts, circumstances, and conditions appearing in connection therewith. The Southern Pacific states that if the Brimstone should receive \$4.50 for the service it performs in hauling an 80,000-pound car of sulphur to the interchange tracks of the Southern Pacific and 3 cents per 100 pounds for hauling a similar car to the interchange tracks with the Kansas City Southern, the elimination of the Southern Pacific from further participation in competitive traffic would follow as a matter of course, because short lines invariably interchange traffic by way of the junction through which they receive the highest divisions. Where hauls differ by not more than 5 miles or thereabouts, each requiring two terminal services, we are not disposed to insist on a very material difference in divisions, especially where such a difference would induce an uneconomical handling of traffic via the more distant junction point.

Although the divisions are stated in uniform amounts, the fact that the coastwise and export shipments of sulphur move via the Southern Pacific and, generally, the fuel oil moves via the line of that carrier, makes the uniformity one more apparent than real.

But on all-rail shipments, moving via the line of either connecting carrier, slightly different service for equal divisions is actual and not one which exists on paper merely.

The difference in the divisions of the Brimstone on sulphur for coastwise movement and for export, on the one hand, and those on all other sulphur, on the other, about 1.8 cents per 100 pounds more on the latter than on the former shipments, is explained by the differences in the rates which are divided. For example, the domestic rate on sulphur from Sulphur Mine to Sabine is 11.5 cents per 100 pounds; the export rate \$1.08 per gross ton, equivalent to 4.8 cents per 100 pounds, of which the Brimstone receives 1.2 cents, whereas the rates for all-rail shipments from Sulphur Mine range from 19 cents per 100 pounds to New Orleans to 82 cents per 100 pounds to Boston, Mass. The car earnings to New Orleans are \$152; to Boston, \$656. The coastwise and export shipments move in gondola cars in trainloads, the loaded cars only being weighed. The comparatively lesser number of rail shipments move in box cars, singly or in numbers not to exceed about five per day. The cars are weighed light and loaded.

The instant case is not one in which either of the participating carriers is dissatisfied with its divisions; none is asking that they be changed; in fact, all the respondents urge that the divisions be maintained. Primarily the focus of attention is directed to whether the divisions are so large that the proprietary company is given an undue preference in transportation rates over its competitors.

The *Industrial Railway cases*, 29 I. C. C., 212, 84 I. C. C., 596, rest largely upon the principle of placing the cost of service where it properly belongs. No cost study was submitted in this proceeding. The witness for the Southern Pacific testified it would be extremely difficult to determine precisely the difference in the cost to the two junctions, as the terminal costs are the same in either case and so many of the expenses are constant, continuous, and apply alike to all traffic. The witness for the Kansas City Southern was of the opinion that there is no doubt but that it costs the Brimstone more to perform the service on traffic interchanged with the Kansas City Southern than on traffic interchanged with the Southern Pacific. The Brimstone connected with the Southern Pacific before connection was made with the Kansas City Southern. No divisions were made by the Southern Pacific until they were made by the Kansas City Southern and then only on that account. If the divisions which were in effect at that time on the Kansas City Southern and which were met by the Southern Pacific had been subjected to the increases authorized under General Order No. 28, and the general increases of 1920, they would have been somewhat higher than the present divisions

which were revised by the railroad administration and have since been increased to reflect the general increases of 1920.

Our order instituting this proceeding did not specifically raise the issue of the common-carrier status of the Brimstone. But as a prerequisite to receiving divisions it must be a common carrier. As observed, the Brimstone and the proprietary company represent a single investment, and whether the Brimstone has only a technical status as a common carrier invites careful scrutiny. The record discloses that the locomotives of the proprietary company in many instances perform the switching service for the Brimstone; that the facilities of the proprietary company, valued at approximately \$260,000, are used by the Brimstone without charge; and it is averred that the maintenance alone of such facilities would cost the Brimstone about \$22,324 annually. These facts and many others tend strongly to support the belief that the Brimstone and the proprietary company represent one enterprise and that the separate incorporation of the Brimstone affords merely an expeditious means of conducting a commercial enterprise to encroach upon the revenues of the trunk lines. But the facts also clearly show that the public has a right to use the facilities of the Brimstone and may demand its service. Comparison of the traffic of independent shippers using the Brimstone with that of the proprietary company shows the percentage of the former to be small. It is the right of the public to demand and use the Brimstone, rather than the extent of the tonnage it carries, that is the real criterion of whether it is a common carrier. *The Tap Line cases*, 234 U. S., 1.

We find that the Brimstone Railroad & Canal Company is a common carrier of property subject to the interstate commerce act, and that it may lawfully receive divisions of rates jointly established by it and its trunk-line connections under appropriate tariff provisions, such divisions to be just, reasonable, and equitable, and not so disproportionate as to amount to rebates or discriminations in favor of the proprietary company in view of the service rendered.

Since the Brimstone is so closely allied to the proprietary company, the extent to which it receives divisions from the trunk lines merits careful consideration. As the Supreme Court has observed in the *Tap Line cases*, *supra*:

If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.

One purpose of the act is to prevent rebates effected by means of exorbitant divisions which find their way to proprietary companies

through common carriers like the Brimstone. We can not overlook the fact that high dividends have been declared in the past or that the accumulated surplus is now sufficient to declare a dividend of almost 100 per cent on the capital stock.

On all-rail movements of sulphur the Brimstone is shown to receive 3 cents per 100 pounds or about \$24 per car for the transportation to the interchanges with the Kansas City Southern and Southern Pacific. The haul to the Kansas City Southern is about 7.5 miles and to the Southern Pacific about 1.5 miles, exclusive of the haul to and from the scales. On behalf of the Brimstone it was testified that it receives 1.2 cents per 100 pounds or about \$10 per car as a division on sulphur to Gulf ports for coastwise or export movement. The average division on traffic other than sulphur for coastwise and export movement is said to be less than \$24 per car. It is observed that the capacity of the cars of the Brimstone is 100,000 pounds and that it is necessary to weigh the sulphur to avoid overloading the cars. The divisions on 100,000 pounds of sulphur would be \$30 at the 3-cent division and \$12 at the 1.2-cent division.

For the service performed by the Brimstone on carload traffic interchanged with the Southern Pacific for what is in some respects similar to a switching service a division of from \$10 to \$24 per car seems excessive. The operating cost of that service on the Brimstone to and from the Southern Pacific junction must be practically the same, regardless of the contents of the car, its origin, or destination. As was stated in *Class Rates from Chestnut Ridge Railway Stations*, 50 I. C. C., 152, it is impracticable and of doubtful accuracy to attempt any refinement of the cost beyond the carload unit in connection with a switching service. In that case we had before us evidence showing the average operating expense of all interchange carload traffic, including per diem on all traffic, and held that the carload should be the unit, and no different charge should be made on different kinds of traffic for a switching service. The divisions to the Brimstone should produce no more than an amount sufficient to cover the cost of its service and a fair return upon the property held for and used in the service of transportation. We conclude that the facts of record, including the dividends paid by the Brimstone in past years and the accumulated credit balance to profit and loss, indicate divisions to the Brimstone which are disproportionate in view of the service rendered, and are tantamount to a rebate to the proprietary company.

We find that the divisions of joint rates now received by the Brimstone from the two other respondents on interstate traffic are and for the future will be unjust, unreasonable, inequitable, and to

the extent that they exceed or may exceed the cost of the service and a fair return upon the property held for and used in the service of transportation for the public generally, are excessive, and, in effect, amount to a rebate to the proprietary company. It does not necessarily follow that reasonable and equitable divisions to the Brimstone should be on the maximum basis.

The record will be held open for a period of 90 days from the date of service of this report, during which respondents will be expected to make the necessary cost studies for the purpose of arriving at reasonable divisions to the Brimstone. In compiling the necessary cost figures the factors outlined by us in *Chicago, West Pullman & Southern R. R. Co. case*, 37 I. C. C., 408, should be taken into consideration so far as applicable. The out-of-line movement to the track scale on traffic interchanged with the Southern Pacific should not be included in computing the cost of the service. After the cost studies have been prepared they should, within 60 days from the service hereof, be submitted to us with copies thereof to the parties to this proceeding. The case will then be set for further hearing in order to fix just, reasonable, and equitable divisions of joint rates on interstate and foreign commerce to be received by the Brimstone.

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No. 10313.¹

U. S. INDUSTRIAL ALCOHOL COMPANY ET AL.
v.
DIRECTOR GENERAL, ILLINOIS CENTRAL RAILROAD
COMPANY, ET AL.

Submitted April 28, 1919. Decided April 4, 1922.

Rates charged on alcohol, in barrels, in carloads, from New Orleans and Harvey, La., to points in Missouri, Minnesota, Wisconsin, Illinois, Indiana, and Ohio found not applicable. Refund of overcharges directed. Complaints dismissed.

L. H. Freedman, A. F. Barnett, and Larkin & Perry for complainants.

Henry G. Herbel, C. C. P. Rausch, C. W. Owen, James A. Chaney, and Elmer A. Smith for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are the U. S. Industrial Alcohol Company, and the Jefferson Distilling & Denaturing Company, corporations manufacturing alcohol at New Orleans and Harvey, La., respectively. In No. 10313 they allege that the rates charged on alcohol, in barrels, in carloads, from New Orleans and Harvey to Kansas City, Mo., and Minneapolis, Minn., were unreasonable and unduly prejudicial. Reparation and reasonable rates for the future are sought. In No. 10323 they allege that the rates charged on the same commodity from New Orleans and Harvey to Cincinnati, Ohio; St. Louis, Mo.; East St. Louis, Chicago, and Freeport, Ill.; Indianapolis, Ind.; and Milwaukee, Wis., were unreasonable. Reparation only is sought.

The shipments in No. 10313 moved between March 20, 1916, and October 4, 1917; those in No. 10323 between February 25, 1916, and September 1, 1917. Charges on all were prepaid at carload commodity rates applicable on alcohol of an "actual value not exceeding \$2.50 per gallon." These commodity rates, so limited, were published to become effective March 20 and February 16, 1916, respectively. Subsequently, on the ground that the actual value of many of the shipments, or portions thereof, exceeded \$2.50 per

¹ This report also embraces No. 10323, Same v. Same.

gallon, charges on most, but not all, of such shipments or portions of shipments covered by No. 10313 were corrected to the basis of second-class any-quantity rates governed by the western classification, and on those covered by No. 10323 to the basis of fourth-class any-quantity rates governed by the southern classification. These class rates applied on alcohol without limitation as to value. There were contemporaneously in effect to the destinations named in No. 10323 lower commodity rates on "liquor, n. o. s." Defendants admit that the latter rates should have been applied and that the shipments were overcharged to that extent. On January 15, 1918, under authority granted by us, rates on alcohol of an actual value in excess of \$2.50 but not in excess of \$3 per gallon were established to the destinations named in No. 10323, as well as rates based on a value exceeding \$3 per gallon. The rates, in cents per 100 pounds, in effect when the shipments moved were as follows:

To—	Alcohol; value not exceeding \$2.50 per gallon.	Liquor, n. o. s.	Any quantity class rates charged.
	Cents.	Cents.	Cents.
Kansas City.....	43	.....	85
Minneapolis.....	53	.....	95
St. Louis.....	33	47	50
East St. Louis.....	33	47	50
Cincinnati.....	36	52	54
Chicago.....	39	55	56
Freeport.....	39	55	58
Indianapolis.....	39	55	58
Milwaukee.....	42	60	61

The commodity rates on alcohol of an "actual value not exceeding \$2.50 per gallon" were not authorized by us under the second Cummins amendment. As subsequently increased they are still in effect.

The main questions presented were the effect on the rates of the so-called Cummins amendments to section 20 of the act, the reasonableness of the rates charged, and the proper method of ascertaining the value of the shipments. Under our view of the case it is necessary to discuss only the former.

The original Cummins amendment, in effect when some of the shipments moved, laid upon carriers liability in full for any loss, damage, or injury caused by them to property transported, notwithstanding any limitation of liability, limitation of the amount of recovery, or representation or agreement as to value in any receipt, bill of lading, or in any contract, rule, regulation, or tariff. Any such limitation, without respect to the manner or form in which it was sought to be made, was declared to be unlawful and void. It further provided that in instances where goods were hidden from

view by wrapping or other means, the carrier might require the shipper to state specifically in writing the value of the goods and should not be liable beyond the amount so specifically stated. By the amendment of August 9, 1916, in effect when the remainder of these shipments moved, the proviso last referred to was amended so as to provide that the provisions respecting liability for full actual loss, damage, or injury, and declaring any limitation thereof to be unlawful and void, should not apply to baggage, or to property, except ordinary live stock, on which the carrier had been or should thereafter be authorized or required by our order to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement should have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and should not, so far as relates to values, be held to be a violation of section 10 of the act. *Williams Co. v. Hartford & New York Transportation Co.*, 48 I. C. C., 269, 272.

The first Cummins amendment did not invalidate rates based on actual differences in value. *Allen v. L. V. R. R. Co.*, 53 I. C. C., 33, 35. Neither did the second Cummins amendment. *Gold Hunter Mining Co. v. N. P. Ry. Co.*, 63 I. C. C., 234, 242. The plain and unmistakable purpose of both amendments was to make unlawful and void, except as otherwise provided therein, all attempted limitations of liability for loss, damage, or injury to property transported, without respect to the manner or form in which they are sought to be made.

Representative bills of lading of record show the following written or stamped thereon:

Value does not exceed \$2.50 per gallon.

This contract shall be construed as to interstate shipments in all respects in accordance with the terms of the Cummins amendment to the Interstate Commerce Act.

This certifies that the description and gross weight of shipment herein are correct subject to verification by the Southern Weighing and Inspection Bureau.

It is immaterial whether these bills were made out by the shippers' or by defendants' agents. The value stated therein was declared by the shippers. Complainants' witness so testified, and it appears necessary that such declarations should have been made by them in order that defendants might determine what rates should be charged. The rates originally charged were based on these declarations.

These declarations of value did not directly limit defendants' liability. But if the goods had been lost or damaged in transit and the shippers had made claims based on values in excess of \$2.50 per gallon, they would have been subject to prosecution under section 10

of the act. Thus defendants' liability was indirectly, but effectively, limited by these necessary declarations of value. The limitations as to value attached to these rates were, therefore, unlawful and void.

The further question arises as to whether the rates to which these unlawful and void limitations were attached were lawful. In *Orange Rice Mill Co. v. T. & N. O. R. R. Co.*, 55 I. C. C., 661, a somewhat similar situation was presented. Our report in that case is not clear and there is much difference of opinion as to the construction that should be placed thereon. For example, at page 663 we said:

Defendants took the position that the rate of 18.5 cents published to both Orange and Beaumont on blackstrap the "declared value of which does not exceed 8 cents per gallon" was legally applicable to the shipments referred to herein. The rate so limited was published without our authority and, under the second Cummins amendment, the limitation was void, and the rate, while technically legally applicable, was unlawful.

We there found that the rates legally applicable were unreasonable. Manifestly the rates "technically legally applicable" were not rendered unlawful by the second Cummins amendment. What that amendment declares to be unlawful it also declares to be void. It does not declare any rate to be void. A void rate would be without legal effect and could not be legally applicable. The applicable rates found unreasonable were those characterized as technically legally applicable. There could not have been at the same time rates legally applicable and other rates "technically" legally applicable. There can be but one applicable rate at the same time over the same route between the same points on the same traffic.

We find that the commodity rates to which the void limitations were attached were lawful rates and were applicable to these shipments, as commodity rates take preference over class rates and specific commodity rates take preference over general commodity rates. Accordingly, the shipments were overcharged. The overcharges should promptly be refunded, with interest.

It is believed that our findings herein remove the cause of complaint and the complaints will be dismissed. If complainants desire to further pursue any of the issues they may do so by supplemental complaint.

ESCH, *Commissioner*, dissenting:

Complainants contend that the value of the alcohol shipped by them did not exceed \$2.50 per gallon, but they concede that the limited-value rates were not applicable on alcohol of a greater actual value than that amount. Defendants, however, contend that the limited-value rates were not applicable on alcohol of any value after August 9, 1916, because such rates were unlawful under the second

Cummins amendment. The commission has repeatedly and heretofore consistently held that rates to which an unauthorized limitation of liability is attached are unlawful under the second Cummins amendment. *Williams Co. v. Hartford & New York Transportation Co.*, 48 I. C. C., 269; *Buckeye Cotton Oil Co. v. G., M. & N. Ry. Co.*, 50 I. C. C., 32; *Silk Association of America v. P. R. R. Co.*, 50 I. C. C., 50; *Wilson & Co. v. C., M. & St. P. Ry. Co.*, 50 I. C. C., 126; *Carr v. C., M. & St. P. Ry. Co.*, 51 I. C. C., 205; *Orange Rice Mill Co. v. T. & N. O. R. R. Co.*, 55 I. C. C., 661. Rates which are unlawful under any section of the act are, nevertheless, applicable so long as they remain in the tariff on the traffic described therein. Almost every case in which rates are found to have been in violation of sections 1, 2, 3, or 4 might be cited in support of this proposition.

I do not concur in the finding that the rates published to apply on alcohol of an actual value not exceeding \$2.50 per gallon were legally applicable on alcohol of a greater value. Section 6 of the act provides that no carrier shall depart from its published rates, and section 10 imposes penalties for false billing or misrepresentation of the property shipped. It is clear that prior to the first Cummins amendment such limited-value rates could not have been applied on commodities of a greater value than specified in the tariff. *Conference Rulings 58 and 295*. At the time of the enactment of the first amendment there were in effect many rates graded according to the actual value of commodities. Did the amendment automatically operate to change the application of such rates without any change in the tariffs? In *The Cummins Amendment*, 33 I. C. C., 682, it was said, at page 692:

There is nothing in the expressed terms of this act or in the history of this legislation that shows any intention or purpose on the part of Congress to affect in any degree the existing rates charged by carriers for transporting property.

Moreover, the opinion in the case just cited recognized the right of carriers to continue to publish rates graded according to actual value without securing authority therefor from the commission. It was not until after the enactment of the second amendment that such rates, when based on the shipper's declaration, as well as rates based on released or agreed values, were held unlawful unless authorized by the commission. *Williams Co. v. New York Transportation Co.*, *supra*. The rates in question were published while the first amendment was in force, and some of the shipments moved before the effective date of the second amendment.

The commission has never before held that rates limited to apply on commodities of certain values were applicable on such commodities where the values were found to be greater than those specified

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in the tariffs, on the ground that the rates had not been authorized under the Cummins amendment. On the other hand, it has several times held informally that the application of such unauthorized rates must be confined to the values specified. In *Allen v. L. V. R. R. Co.*, 53 I. C. C., 33, it was held that unauthorized rates on live stock exceeding certain values, which were higher than the rates where such values were not exceeded, were the only rates that could lawfully have been applied on live stock exceeding such values.

The effect of the findings of the majority is that complainants are accorded the benefit of the limited-value rates on shipments of alcohol which exceeded the value for which the rates were published, while all other shippers of the same grade of alcohol who declared its true value have had to pay higher rates in accordance with the published tariffs. The assessment of the higher rates was in accord with the commission's previous informal and formal rulings, and other parties have no redress now because of the statute of limitations.

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No. 11229.

LOUIS WERNER STAVE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND LOUISIANA
RAILWAY & NAVIGATION COMPANY.

Submitted December 21, 1920. Decided April 3, 1922.

Charges applicable on staves, in carloads, from New Orleans, La., to Frellsen, La., originating at interstate points and from Frellsen to New Orleans for export, found unreasonable. Reparation awarded.

Lawrence F. Daspit for complainant.

John F. Finerty and *Alex. M. Bull* for director general, as agent.

E. C. D. Marshall for Louisiana Railway & Navigation Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation manufacturing staves at Shreveport, La., by complaint seasonably filed, as amended, alleges that the rates charged on staves, in carloads, shipped over the line of the Louisiana Railway & Navigation Company, hereinafter called defendant, 10 between January 3 and January 19, 1918, from New Orleans, La., to Frellsen, La., and 72 between January 19, 1918, and April 23, 1919, from Frellsen to New Orleans, were unreasonable. We are asked to award reparation and to establish reasonable rates for the future. Rates will be stated in cents per 100 pounds unless otherwise indicated and, except as noted, do not include the general increase of 1920.

Frellsen is on the Mississippi River about 14 miles northwest of New Orleans. Defendant has no water-front terminals at New Orleans and with a view to establishing export and import facilities at Frellsen it purchased certain property at that point in 1916, and subsequently leased a portion to complainant.

The shipments from New Orleans originated on other lines in Mississippi and Alabama and were billed to New Orleans, although intended for Frellsen. Freight charges were paid upon arrival at New Orleans, new billing was executed, and the shipments were forwarded to Frellsen in the same cars with charges prepaid. Frellsen

is a nonagency station. The shipments from Frellsen for export were billed from Kenner, La., the first agency station intermediate to New Orleans. Defendant delivered these shipments to other lines at New Orleans for switching to the docks and separate charges were assessed for the switching service. Only the rates between New Orleans and Frellsen are questioned. The weight of the shipments from New Orleans to Frellsen averaged about 53,400 pounds, and of those in the reverse direction about 63,300 pounds.

Prior to June 25, 1918, a certain tariff of defendant naming local and proportional line-haul rates provided a rate of 5 cents on staves and numerous other kinds of forest products, minimum 40,000 pounds, between New Orleans and Frellsen. Complainant's lease was executed with the understanding that a rate of 1.5 cents would be established and that defendant would seek our permission to apply that rate on shipments which moved prior to the reduction. Accordingly, defendant published in a supplement to its switching tariff, effective January 20, 1918, an item providing that staves and certain other commodities shipped to New Orleans over its line would be switched free to Frellsen, and another item providing that, with this exception, its switching charge from New Orleans to Frellsen on the same commodities, minimum 50,000 pounds, would be 1.5 cents. Many of the commodities upon which the 5-cent rate applied were not named in the items published in the switching tariff. Through error, it is said, this switching charge was not made applicable in the opposite direction. The shipments from New Orleans to Frellsen upon which reparation is claimed moved prior to the establishment of the switching charge. The switching tariff was applied on subsequent shipments to Frellsen. Effective June 25, 1918, the 5-cent rate between Frellsen and New Orleans, and the 1.5-cent switching charge from New Orleans to Frellsen were increased to 6.5 and 2 cents, respectively, under authority of General Order No. 28 of the Director General of Railroads.

Charges on all of the shipments concerned appear to have been assessed at the applicable rates of 5 or 6.5 cents. The latter rate was increased to 8 cents, and the switching charge to 2.5 cents in connection with the general increase of 1920. Complainant asks us to require the future maintenance of the switching charge of 2.5 cents from New Orleans to Frellsen; to prescribe the same charge for application in the reverse direction; and to award reparation to the basis of 1.5 cents on the shipments which moved prior to June 25, 1918, and to the basis of 2 cents on those which moved thereafter.

Counsel for the director general contends that the switching charge of 1.5 cents was not legally established, because the item in which that charge was published did not specifically refer to and

cancel the 5-cent line-haul rate, nor was the tariff naming that rate at the same time correspondingly amended in accordance with the provisions of rule 8 (a) of Tariff Circular 18-A; and also that shipments from New Orleans to Frellsen subsequent to January 19, 1918, upon which the switching rate was applied, were undercharged.

The 5-cent rate in effect prior to June 25, 1918, was a group rate which applied between New Orleans and stations on defendants' line as far north as Baton Rouge, La. It was subject to a different minimum than was the 1.5-cent switching rate, and applied on many commodities not covered by the latter rate. The tariff in which it was published contained the following rule:

'In the absence of specific provisions herein to the contrary, shipments transported under this tariff are entitled to such privileges and subject to such charges relating to * * * switching * * * together with all other privileges, charges, and rules which in any way increase or decrease the amount to be paid on any shipments between points named in this tariff, or which increase or decrease the value of service to the shipper, as provided in tariffs of the L. R. & N. Co., viz. * * * Terminal charges tariff No. 1400 A, I. C. C., No. A-578. * * *

The switching rate of 1.5 cents was published in the tariff mentioned in this rule, and although there was no specific item contemporaneously published canceling the 5-cent group rate from New Orleans to Frellsen, the rule above quoted gave notice that the switching tariff might contain rates or charges affecting those published in the tariff naming the group rate. There are no facts of record from which an inference might be drawn that the switching rate or the manner of its publication unduly preferred complainant or that other shippers were misled or prejudiced thereby.

We have frequently held that a shipper is not required to look beyond the face of a tariff. In *Interstate Remedy Co. v. American Express Co.*, 16 I. C. C., 436, at page 439, we said:

* * * we are of opinion that the carrier may not plead the unlawfulness of its tariff to avoid extending the benefit thereof to a shipper. While it has been repeatedly emphasized by the Commission that the shipper is put upon notice of the rate by the publication of the tariff, it has not been held that a shipper must determine for himself the lawfulness of a rate, regulation, or practice, upon his peril. The responsibility rests upon the carrier to have lawful rates and rules in effect, and every shipper may with safety rely upon such rates without fear that they will be withdrawn as illegal after he has made shipment thereon, resting in the confidence that they are lawful as long as they are in force. If subsequently found to be unlawful, the carrier is subject to penalty for the institution and maintenance of such rates or rules, but the law does not contemplate that the shipper shall move upon any other theory than that the provisions of the carrier's tariff are in full compliance with the law's demands.

In view of all the circumstances we do not sustain the contention that the switching rate was illegal and that shipments which moved

from New Orleans to Frellsen on and after January 20, 1918, were undercharged. In publishing its tariffs defendant failed to show as clearly as it should have done that the switching rate superseded the group rate formerly in effect. Having determined to include Frellsen within the switching limits of New Orleans and to maintain between those points a switching rate that differed from the group rate, defendant should have so published its tariffs as to plainly show that the switching tariff governed. It will be expected to promptly revise the tariffs accordingly.

The rate comparisons submitted by complainant tend to show that the rates of other lines effective June 25, 1918, on traffic generally between New Orleans and near-by points such as Gouldsboro, Gretna, Harvey, Amesville, Algiers, Port Chalmette, and Seabrook, La., approximately 7 to 26 miles from New Orleans, ranged from 1 to 3 cents per 100 pounds, and when stated in amounts per car, from \$5 to \$8, as compared with the contemporaneous group rate of 6.5 cents from Frellsen to New Orleans. Most of these rates applied on export and import or interchange traffic, but except for some general statements it is not shown that the transportation conditions were similar in other respects. Complainant also refers to rates of the Illinois Central on logs, crossties, and staves ranging from 1.5 to 3 cents between New Orleans and certain local stations on its lines 20 to 35 miles distant, and proportional or transit rates on staves of 1.5 and 2 cents maintained by respondent and by certain other lines for distances under 25 miles. It asserts that storage of the staves at Frellsen was in the nature of transit, and, therefore, that the shipments were justly entitled to comparatively low inbound and outbound rates.

A witness for defendant testified that the cost of moving traffic between New Orleans and Frellsen is less than that under certain of the comparative rates cited; that the switching rate was just and reasonable, considering all the circumstances and conditions, and in comparison with the rates of other lines in the New Orleans district; that there were no conditions justifying a higher rate from Frellsen to New Orleans than applied in the reverse direction; and that defendant intends, upon completion of its terminal facilities at Frellsen, to establish the New Orleans-Port Chalmette basis of export and import rates on all classes and commodities between Frellsen and New Orleans.

In behalf of the director general it was contended that many, if not all, of the comparative rates mentioned by complainant resulted from competitive conditions which did not similarly affect rates between Frellsen and New Orleans, and evidence was offered showing that the rates attacked were not higher than the rates on lumber

and staves for corresponding distances maintained by other carriers between New Orleans, Memphis, Tenn., Mobile, Ala., etc., and local stations on their respective lines. The distance from New Orleans to Baton Rouge is about 80 miles over defendant's line and 90 miles over the Yazoo & Mississippi Valley. Assuming an average haul of 45 miles under the group rates assailed, they compared favorably with other group rates mentioned applying on lumber and staves for similar distances between points in southern territory. Subsequent to June 25, 1918, these rates, generally speaking, ranged from 5 to 7.5 cents. Those of the Yazoo & Mississippi Valley from New Orleans to Frellsen and Kenner were 6.5 and 5 cents, respectively. The distance-scale rates on staves maintained by various southern lines ranged from 5 to 7.5 cents for a distance of 15 miles. The scale of the Louisiana Southern, referred to in this connection, resulted from *St. Bernard Cypress Co. v. Director General*, 57 I. C. C., 489, in which we found that rates on cypress lumber, in carloads, from New Orleans should not exceed 7 cents to Violet, La., 11 miles; 9 cents to Phoenix, La., 35 miles; and 10 cents to Pointe-a-la-Hache, La., 45 miles.

The rate comparisons submitted by the director general were not supported by any evidence showing similarity of transportation conditions. Nor does the evidence demonstrate the propriety of a group adjustment whereunder the same rate applied for distances of 15 miles and under as for distances of 80 miles or more. The grouping of Frellsen with Baton Rouge is clearly illogical, considering the great disparity in distance and the fact that defendant regards Frellsen as its New Orleans terminal for export and import traffic. It appears, furthermore, that under the agreement releasing defendant from Federal control the director general retained none of the revenues on these shipments and would not be affected by an award of reparation.

Upon all the facts of record we find that the rates assailed were, are, and for the future will be unreasonable to the extent that they exceeded, exceed, or may exceed 3 cents per 100 pounds prior to June 25, 1918, subject to the general increases effective on that date under General Order No. 28 of the director general and to those under our authorization of July 29, 1920.

We further find that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby to the extent that the charges paid exceeded those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

An appropriate order will be entered.

HALL, *Commissioner*, dissenting:

Frellsen is the third station beyond New Orleans. It is not within the switching limits of that city. The movements from New Orleans were in local trains under new bills of lading there issued. The service was clearly road haul and not switching.

Both the 5-cent and 1.5-cent rates, as published, were to apply either as local or as proportional rates. They both covered the same service on staves except that the carload minimum differed. At the 5-cent rate it was 40,000 pounds and at the 1.5-cent rate it was 50,000 pounds. The former rate was not canceled and the latter was not noted in the tariff as an alternative rate. It could not be an alternative rate because under any conceivable conditions of loading it would be the lower rate of the two and exclude the other. The 5-cent rate could be used alternatively with distance rates in the same tariff. There is no warrant for reading into that tariff as a further alternative the 1.5-cent rate published in another tariff which makes no reference to the tariff publishing the 5-cent rate.

The tariff rule quoted did not have the effect of substituting the 1.5-cent rate for the 5-cent rate. These rates were for the same service. The privileges, charges, and rules referred to in that rule related to services other than those covered by the 5-cent rate. *Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co.*, 18 I. C. C., 310, 315; *Rule 10 of Tariff Circular 18—A*.

Publication of the 1.5-cent rate as a switching rate is immaterial when in fact it covered a road-haul movement. A carrier may not thus establish rates, which would be highly preferential of favored shippers, by the simple device of making no reference thereto in tariffs publishing contemporaneous higher road-haul rates for the same service, and giving no notice to shippers generally that lower rates are published by it in another tariff.

The 5-cent rate was a group rate applicable on intrastate as well as interstate traffic. It applied to points as far distant as North Baton Rouge, approximately 80 miles. Higher group rates applied to more distant points. The disruption of one group, which will undoubtedly affect the others, is not warranted on the record before us. The 5-cent rate is now 8 cents and the 3-cent rate found reasonable will become 5 cents. The spread between them is greater than between any of the other group rates. The interstate rate prescribed for the future will be lower than the present intrastate rate and will result in discrimination against intrastate commerce.

In my opinion the 5-cent rate was applicable and not unreasonable. The complaint should be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 1473.

CANCELLATION OF THIRD-CLASS RATING ON FRUITS AND VEGETABLES BETWEEN MINNESOTA, THE DAKOTAS, IOWA, AND NEBRASKA.

Submitted March 3, 1922. Decided April 7, 1922.

Proposed cancellation of exception to classification in western trunk-line territory providing for third-class rating on mixed carloads of fresh fruits and vegetables, minimum 20,000 pounds, found not justified. Suspended schedules ordered canceled and proceeding discontinued.

W. Y. Wildman for Chicago & North Western Railway Company and other respondents.

E. J. Hyett for Chicago, Milwaukee & St. Paul Railway Company.

J. P. Haynes for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, CAMPBELL, AND COX.

BY DIVISION 3:

By schedules filed to become effective January 15, 1922, respondents propose to cancel an exception to the western classification, applying in western trunk-line territory, which provides a rating of third-class, minimum 20,000 pounds, on mixed carloads of fresh fruits and vegetables. This exception, with two modifications, applies between stations in Minnesota, North Dakota, South Dakota, Iowa, and Nebraska. Upon protest by the Chamber of Commerce of Sioux City, Iowa, the operation of the schedules was suspended until June 14, 1922.

The suspended schedules state that the classification and class rates will apply. Rule 10 of the western classification provides in substance that on mixed-carload shipments moving under class rates the highest rate and carload minimum on any article in the car will apply. This is the general rule in western territory.

The effect of the proposed cancellation would be to increase the carload minima applicable to mixed carloads of fresh fruits and vegetables. All fresh or green fruits and vegetables, in carloads, now rated in the western classification take third class or lower, but the minima vary from 17,000 to 36,000 pounds. With the exception of potatoes and dasheens the highest carload minimum on fresh fruits and vegetables is 24,000 pounds. The minimum is 30,000 pounds on sweet potatoes and dasheens. On potatoes other than sweet potatoes it is 30,000 pounds from June to September, inclusive,

and 36,000 pounds during the other months. A large number of vegetables such as cabbage, beets, onions, and green corn, and fruits such as apples, oranges, and lemons take a minimum of 24,000 pounds.

Respondents state that the purpose of the proposed cancellation is not to produce more revenue, but simply to bring about conformity with the general classification rule; and that mixed carloads of fresh fruits and vegetables can well be loaded to a minimum of 24,000 pounds. In support of this they show an average loading of 34,800 pounds on all fresh fruits and vegetables moved over the Chicago & North Western during 1920. It was admitted that most of these cars were loaded with potatoes. The average loading of 16 mixed carloads shipped from Sioux City by the Halley-Neeley Company during 1921 and January, 1922, was 11,634 pounds. Several of these cars contained bananas and weighed only 6,000 or 7,000 pounds.

Respondents point out that in certain instances the increases in the minima would be offset by applying the carload rates to a part of the contents of a car, and the less-than-carload rates to the balance, under section 4 of rule 10 of the western classification. This section provides in substance that when the aggregate charge for the entire shipment is less on the basis of the carload rate and minimum for one or more articles and the less-than-carload rate for other articles, the shipment will be charged accordingly.

It was suggested by one of the respondents that the application of the classification exception under consideration results in unjust discrimination against shippers from jobbing points in Missouri and Illinois from which the classification basis applies. No instances of such discrimination were cited. Distribution in mixed carloads apparently does not extend over a distance of more than 100 to 125 miles.

This exception has been in effect for 14 years. Shippers of fresh fruits and vegetables in this territory have warehouses in which they store carload shipments, to be later distributed to small dealers in less-than-carload lots or in mixed carloads. Mixed carloads are also shipped from one warehouse to another. Expeditious service is thus obtained.

The extent to which the present minimum of 20,000 pounds on mixed carloads would be increased depends largely upon the contents of the car. It is estimated that the three minima, 24,000, 30,000, and 36,000 pounds, would apply to 95 per cent of the mixed carloads. Respondents' contention that mixed carloads of fresh fruits and vegetables can well be loaded to a minimum of 24,000 pounds is not sustained by the record.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

No. 12347.

CALIFORNIA COTTON MILLS COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted January 26, 1922. Decided April 7, 1922.

Charges on certain shipments of cotton twine and cotton-factory sweepings from Uniontown, Ala., to Pacsteel, Calif., found to have been based on unreasonable minimum weights. Reparation awarded.

E. W. Hollingsworth and Bishop & Bahler for complainant.

Fred W. Heid, Fred H. Wood, James R. Bell, Elmer Westlake, and C. W. Durbrow for defendant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

Exceptions were filed by defendant to the report proposed by the examiner. The case was orally argued. We have modified the conclusions proposed by the examiner.

Complainant, a corporation engaged in manufacturing cotton goods at Oakland, Calif., alleges that the charges, based on minimum weights, on numerous carloads of cotton twine and cotton-factory sweepings shipped from Uniontown, Ala., to Pacsteel, Calif., were unjust and unreasonable. We are asked to award reparation on basis of the actual weights. Only nine of the shipments moved during the period of Federal control; and the director general is the sole defendant. The remainder of the shipments moved after the termination of Federal control and will not be considered here.

The shipments moved between September 13, 1919, and January 21, 1920, both inclusive, over lines of the Southern and the Southern Pacific system. Of the nine cars, eight contained cotton twine packed in wooden cases and bales, and one contained cotton-factory sweepings, packed in bales. Each car contained less than the applicable minima of 40,000 pounds on twine and 30,000 pounds on sweepings. Charges of \$476 per car were collected on the twine and \$432 on the sweepings at the applicable rates of \$1.19 and \$1.44 per 100 pounds, respectively.

The bill of lading for car STLSW 10980, loaded with twine, bears no notation with respect to the size of car ordered by the shipper; but the bills of lading for the remaining seven shipments of twine and the car of sweepings show that the consignor ordered cars 50 feet long, and smaller cars were furnished by defendant for its convenience. One bill of lading dated December 18, 1919, bears the following notation made by the shipper: "Have been asking for 50-foot car for three months as minimum can not be loaded in smaller car." Complainant states that the nine cars were loaded to full visible capacity. The portions of six shipments of twine and one of sweepings which were not loaded into the respective cars were forwarded as "follow lots" in merchandise cars. There was no follow lot for car NP 40234 loaded with twine. Charges on the excess portions, or follow lots, were assessed at the carload rates of \$1.19 on twine and \$1.44 on sweepings on basis of actual weight. The charges on the follow lots are not assailed and need not be further considered. Complainant is only asking for reparation on basis of the actual weights of the original, or main, cars. It contends (1) that the cars furnished could not be loaded to the required minima; and (2) that the failure to provide in the tariffs for the protection of actual weights, where small cars were furnished for carrier's convenience in lieu of larger cars ordered by the shipper, resulted in unreasonable charges on its shipments.

On February 20, 1919, the application of the so-called carrier's convenience and two-for-one rules, which had been and still are carried in the transcontinental tariffs of rates from defined territories to the Pacific coast, was limited so as not to apply on shipments originating in southeastern territory. In *Furnishing Cars at Carrier's Convenience*, 42 I. C. C., 379, 381, we said that both of such rules are desirable and, once established, can be abrogated only for exceptional reasons. The southern carriers are opposed to the application of the rules on transcontinental traffic on the grounds that they are not applied locally within the Southeast, that the southern lines own but few box cars 50 feet in length, and that the demand in the Southeast for large cars exceeds the supply. Upon this record there is no showing of exceptional reasons which warranted the failure to provide for the protection of the actual weight upon any of complainant's shipments which were loaded to so-called full visible capacity.

Complainant's witness, who was in charge of the inbound shipments at destination, testified that he personally saw that practically all of the cars were loaded with all of the cases that could possibly be stowed into them. Another witness stated that his mathematical calculations based upon the three dimensions of the packages as

compared with the three dimensions of the cars furnished prove that no more cases could have been loaded into the cars, although *Gibbs v. N. & W. Ry Co.*, 55 I. C. C., 17, we said:

Examination of the data upon which his calculations were based does not support his general statement with respect to all of the nine shipments. Car STLSW 10980 contained 1,907 cubic feet of loading space. The 46 cases loaded into that car occupied only 934 cubic feet, or 49 per cent of the available capacity. The cases were uniform in size, 35.5 inches long, 32.5 inches wide, and 30.5 inches high; and the space in the car was 33 feet 10 inches in length, 8 feet 3 inches in width, and 6 feet 10 inches high. By standing the cases on end, with the shortest dimension running the length of the car it would have been mathematically possible to load 78 cases, which would have occupied 1,588 cubic feet, leaving vacant about 319 cubic feet or about 17 per cent of the total car space. The mathematical loading capacity of a car probably would not be attained in actual practice, and some allowances would ordinarily be necessary for projections and doorway space, but the actual loading of this car to 49 per cent of its capacity is so small in comparison with the possibility of loading to 83 per cent that we can not regard it as being loaded to "full visible capacity" within the ordinary meaning of that phrase.

On the other hand, the same car proves complainant's contention that the minimum of 40,000 pounds, applicable on twine shipped in cars of any length, is unreasonable and can not be loaded in cars of 33 feet 10 inches. The average weight of the 46 packages contained in this car, 420 pounds, applied to the theoretical loading capacity of 78 cases, would result in a loading of only 32,760 pounds, even without allowances for projections or door space. We think that complainant should have loaded 30,000 pounds in this car of 33 feet 10 inches.

The shipment of sweepings in car L&N 6110 is within the same category, except for the fact that a 50-foot car was ordered. It was 36 feet 1 inch long, contained 2,453 cubic feet of loading space, and was loaded with 42 bales, 30 inches by 40 inches by 50 inches, occupying 1,558 cubic feet and weighing 19,010 pounds. The mathematical loading possibility was 60 bales, which, at the average weight of 453 pounds, would result in a maximum possible loading of 27,180 pounds, without allowances for projections and door space. It is apparent that this car was not loaded to full visible capacity but that cars of this size could not be loaded to the required minimum of 30,000 pounds of sweepings, which was therefore unreasonable. We think complainant should have loaded 25,000 pounds on this car.

In *Riverside Mills v. G. R. R.*, 25 I. C. C., 434, we said "it appears that the initial carrier was aware of the fact that 50-foot cars were
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required to accommodate the minimum weight of 30,000 pounds" on cotton-factory sweepings, and we awarded reparation. In *Tull & Gibbs v. N. & W. Ry. Co.*, 55 I. C. C., 17, we said:

Where there is a uniform minimum for cars of all lengths, as in this case, the carrier is not required to furnish a car of any specified length, but is under the duty of establishing a minimum weight that can be reasonably loaded into a car of the size furnished.

Car NP 40234 apparently contained a complete shipment of twine, as there was no follow lot. The loading was 38,841 pounds, or less than the required minimum of 40,000 pounds. A 50-foot car was ordered, and a 40-foot 4.5-inch car was furnished. The loading space used was only 57 per cent of the car capacity, and 84 cases were loaded as compared with a mathematical possibility of 112 cases. This car can not be considered loaded to full visible capacity. It would have been possible to load therein more than the required minimum.

In the same category is car Pa 500933, 40 feet 5 inches in length, containing 3,243 cubic feet of space, which was loaded to 36,767 pounds, with 82 cases occupying only 1,670 cubic feet, or 51 per cent of the available space. The mathematical loading possibility was 117 cases, weighing 52,316 pounds, or more than the minimum. It will further be noted that this car, which is larger than NP 40234, was loaded lighter, although the size of the packages in both cars was identically the same, namely, 35.5 inches by 32.5 inches by 30.5 inches.

Cars L&N 15265, MP 35708, and L&N 103060 were 36 feet in length and each contained 2,448 cubic feet of space. Each was loaded with 72 packages out of a mathematical possibility of 108, weighing more than the minimum. The packages occupied about 60 per cent of the available space in each, and the car loadings were 32,900, 33,206, and 30,719 pounds, respectively. Apparently the spaces in these cars were not utilized to the fullest practicable extent.

Cars MStL 19700, containing 36,589 pounds, and C&EI 62583, containing 35,158 pounds, were apparently loaded as fully as practicable. In the former 132 cases of two sizes were loaded as compared with the mathematical possibility of about 142 cases; and in the latter 78 cases were loaded as compared with the mathematical possibility of 84 cases. The former occupied 1,739 out of 2,680 cubic feet of available space; and the latter occupied 1,588 out of 2,516 cubic feet of available space. Applying the average weight per package to the theoretical number of packages which might have been loaded in these two cars the maximum possible loading would have been less than the required minimum of 40,000 pounds. The weights of these two cars with the weights of their respective follow

lots exceeded the applicable minimum, and apparently could have been loaded into the size of cars ordered by the shipper. It was unreasonable to base the charges on these two shipments on more than their actual weights.

Defendant contends that the failure to load the required minima was due to the size of the containers which the shipper elected to use. This contention does not take into consideration the fact that the shipper could have loaded 50-foot cars in excess of the required minima in the packages actually used. Apparently there was nothing unusual about the size of the containers used by complainant. Out of the total number of boxes of twine, in eight cars, 496 boxes in seven cars were of uniform dimensions, namely, 35.5 inches by 32.5 inches by 30.5 inches, and occupied about 20 cubic feet of space. The boxes in the remaining car of twine were of practically the same size, with the exception of 55 cases which were 36 inches by 34 inches by 20 inches. The 10 bales of twine were smaller, and each occupied 16 cubic feet. The carload of sweepings was packed in uniform bales 50 inches by 40 inches by 30 inches.

Defendant offered in evidence a copy of bill of lading of car C&A 38335, shipped from the same consignee to complainant on February 12, 1920, showing a loading of 57,670 pounds of cotton twine in cases, to prove that the required minimum could be loaded into 40-foot cars. The Equipment Register shows that that particular car was 9 feet 2 inches wide and 9 feet 2.25 inches high, both wider and higher than any of those here considered. The mathematical loading possibility of this car, using packages of the size contained in the seven cars, and an average weight of about 450 pounds, would be about 60,750 pounds. If all of the cars furnished had been as large as C&A 38335 there would probably have been no ground for this complaint. It will further be noted that we have found above that the cars 40 feet 4.5 inches in length and 40 feet 5 inches in length were not loaded to full visible capacity; and the 40-foot car which, we have found, was loaded to the fullest practicable extent, contained only 2,680 cubic feet of space, or 79.5 per cent of the space in C&A car 38335, referred to by defendant.

We find that the charges assailed on four shipments were unreasonable to the extent that they exceeded the charges that would have accrued on basis of the following weights:

	Pounds.
Car StLSW 10980, twine.....	30,000
Car L&N 6110, sweepings.....	25,000
Car MStL 19700, twine.....	86,589
Car C&EI 62583, twine.....	85,158

We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges collected on the above four cars and those which would have accrued on basis of the weights herein found reasonable; and that it is entitled to reparation in the sum of \$289.21, with interest.

An order awarding reparation will be entered.

68 I. C. C.

No. 12275.

CENTRAL WISCONSIN SUPPLY COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, MILWAU-
KEE & ST. PAUL RAILWAY COMPANY, ET AL.

Submitted January 24, 1922. Decided April 10, 1922.

Rates on fuel wood, in carloads, from various points in Wisconsin to Camp Grant, Ill., found unreasonable. Reparation awarded.

B. T. Bailey and Franklin D. Jones for complainant.
John F. Finerty, Thomas M. Woodward, Kenneth F. Burgess, and J. N. Davis for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued before us.

Complainant, a corporation, alleges by complaint filed February 15, 1921, as amended, that the rates charged on 24 carloads of fuel wood, shipped between December 13, 1919, and January 17, 1920, from various points in Wisconsin to Camp Grant, Ill., were unreasonable and in violation of the long-and-short-haul provision of section 4 of the interstate commerce act. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments, of an average weight of 59,732 pounds per car, moved over the Chicago, Milwaukee & St. Paul to Rockford, Ill., and thence over the Chicago, Burlington & Quincy to Camp Grant. The two lines named will be hereinafter referred to as the Milwaukee and the Burlington. The charges applicable were based upon combination rates, composed of distance commodity rates to Rockford plus a distance commodity rate of 2 cents beyond. The following table shows the points of origin, the distances to Camp Grant, the rates applicable, and the ton-mile earnings thereon:

To Camp Grant from—	Distance.	Rates.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Porters, Wis.....	27	6	44.1
Cross Plains, Wis.....	92	7.5	16.3
Spring Green, Wis.....	115	8.5	14.7
Woodman, Wis.....	153	9.5	12.4
Wauseka, Wis.....	158	9.5	12
Bridgeport, Wis.....	168	10	11.9

Rates other than those applicable appear to have been assessed, on some shipments, resulting in both overcharges and undercharges.

At the time of movement the Milwaukee published lower rates from the points specified to Davis Junction, Ill., a point 8 miles south of Camp Grant, and to which Camp Grant is directly intermediate. These rates, together with the ton-mile earnings thereon, were as follows:

To Davis Junction from—	Distance.	Rates.	Ton-mile earnings.
	Miles.	Cents.	Miles.
Porters, Wis.....	34.9	4	22.9
Cross Plains, Wis.....	100.3	6.5	12.9
Spring Green, Wis.....	122.5	7	11.4
Woodman, Wis.....	161.4	8	9.9
Wauzeka, Wis.....	165.7	8	9.6
Bridgeport, Wis.....	176.2	8	9

Defendants seek to justify the lower rates to Davis Junction on the ground that the Milwaukee operates over the rails of the Burlington from Rockford to Davis Junction under an agreement which prohibits it from accepting or delivering shipments at points between Rockford and Davis Junction. Notwithstanding this agreement a fourth section departure is presented. However, the shipments moved during the period of Federal control, and this departure was protected by an appropriate order.

A number of comparisons were submitted by defendants to show that the rates assailed compared favorably with like rates for intrastate hauls in Michigan and Illinois, and for interstate hauls on coal and lumber between points in neighboring States, but no evidence was given of the extent of the movement on any of the rates cited.

Fuel wood is a low-grade commodity and necessarily must move on low rates. This fact was recognized by the Director General of Railroads when, by subsequent freight rate authority, fuel wood was included among the commodities excepted from the minimum line-haul charge of \$15 per car provided in General Order No. 28. In *Oshkosh Fuel Co. v. C., M. & St. P. Ry. Co.*, Docket No. 3987, decided October 9, 1911, we held that the rate of 8.5 cents on fuel wood from Barnum, Wis., to Rockford, Ill., a distance of 171.5 miles, was unreasonable to the extent it exceeded 6.5 cents. When the shipments under consideration moved, the rate between the foregoing points had been increased to 8 cents, or the same as the rate from Woodman, Wauzeka, and Bridgeport to Davis Junction. Again, in *Rates on Fuel Wood, Sawdust, and Shavings*, 26 I. C. C., 254, decided February 10, 1913, we found not justified a proposed increase of 1 cent per 100 pounds in the rates on these commodities from points in Wisconsin and Michigan to North Avenue, Chicago, and suburban stations north thereof on the Chicago & North Western. In December, 1919, the rate from Allenville, Wis., to

Evanston, Ill., points involved in the last-cited case, was 5.5 cents for a haul of about 165 miles, while to Chicago, Ill., it was 7 cents for a haul of 175 miles. Defendants' contention that the shipments under consideration moved over two lines overlooks the fact that the carriers involved were then operated as a part of a unified system.

Defendants urge upon brief and argument that, even if the applicable rates were unreasonable, complainant is not entitled to reparation in that it has not shown that it was a party to the contract of transportation covering certain of the shipments, and that all of the shipments were sold by complainant at a price which took into consideration the freight rate. Certified copies of the bills of lading, and in certain instances the freight bills, named the complainant as either consignor or consignee, except on one shipment which originated at Bridgeport, as to which there is no proof that complainant was a party to the transportation. The testimony shows that complainant sold the shipments f. o. b. Camp Grant; that while the freight charges were paid by the camp supply officer at that point, the amount thereof was deducted from complainant's invoices. Complainant, therefore, ultimately paid and bore the freight charges as such. The fact that complainant included the freight charges in part in the selling price does not preclude it from recovering the damage it suffered by reason of having ultimately paid an unreasonable freight rate, *Southern Pac. Co. v. Darnell-Taenzer Co.*, 245 U. S., 531, nor is complainant's right to a recovery affected by the further fact that the Government happened to be both the purchaser and the carrier of the shipments in question.

We find that the applicable rates from the above-mentioned points of origin to Camp Grant were, are, and will be unreasonable to the extent that they exceeded, exceed, or may exceed the rates on fuel wood contemporaneously in effect from the same points of origin to Davis Junction. We find further that, with the exception of the shipment from Bridgeport, complainant made the shipments as described and ultimately paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice, taking into consideration the outstanding undercharges and overcharges.

COMMISSIONER POTTER dissents.

68 L. C. C.

No. 13110.¹

MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY

v.

PEORIA & PEKIN UNION RAILWAY COMPANY.

Submitted March 18, 1922. Decided April 13, 1922.

Switching charges of defendant effective from complainant's rails, and proposed from protestant's rails, at Peoria, Ill., to defendant's tracks at Peoria and East Peoria, Ill., found unjustly discriminatory and unduly prejudicial. Unlawful discrimination and prejudice ordered removed. Suspended schedules ordered canceled.

M. M. Joyce and Donald Evans for complainant.

Silas H. Strawn and Frank H. Towner for protestant and interveners.

R. V. Fletcher, John M. Elliott, Thomas W. White, and John B. Cockrun for defendant.

James A. Fenelon for Eighth District Coal Operators Association; *John W. Bingham* for Corn Products Refining Company; *W. J. Gorman* for United States Food Products Corporation, Liberty Yeast Company, and American Distillery; *E. G. Schaefer* for Keystone Steel & Wire Company; and *W. E. Schuman* for city of Pekin, Ill.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND COX.

Esch, Commissioner:

These cases were separately heard but were argued together and will be disposed of in one report. In No. 13110 the Minneapolis & St. Louis Railroad Company, hereinafter referred to as complainant, attacks as unreasonable, unjustly discriminatory, and unduly prejudicial the charge of \$4 per car established August 30, 1921, by the Peoria & Pekin Union Railway Company, hereinafter referred to as defendant, for switching freight cars between the rails of complainant at Peoria, Ill., and defendant's tracks in its East Peoria, Ill., yards, where the cars come from or are destined to points beyond the Peoria-Pekin, Ill., switching district. The Chicago & Alton

¹ This report also embraces Investigation and Suspension Docket No. 1455, in the Matter of Intermediate Switching Charges at Peoria and Pekin, Ill.

Railroad Company and Peoria Railway Terminal Company intervened in support of the complaint. In Investigation and Suspension Docket No. 1455, by schedules filed to become effective December 16, 1921, defendant proposed to establish charges of \$4 per car for switching freight cars in similar service between the Peoria Railway Terminal at Peoria and defendant's tracks in the East Peoria yards, and \$3.50 per car between the Peoria Railway Terminal and defendant's tracks in yards other than the East Peoria yards. Upon protest of the Peoria Railway Terminal Company, hereinafter referred to as protestant, the tariff was suspended until May 15, 1922.

The rails of complainant terminate at Iowa Junction, a point within the switching limits of Peoria, but approximately 2 miles from the passenger station at that point. Protestant has a line from Pekin, along the west bank of the Illinois River to Peoria with terminal facilities at both points. Pekin is situated on the east bank of the Illinois River and Peoria on the west bank approximately 9 miles apart. Defendant has a single-track line to Peoria from a point on the west bank of the river directly across from Pekin, which line generally parallels the line of protestant. On the east side of the river defendant has a double-track line between Pekin and Peoria with a bridge crossing at Peoria, where connection is made with the single-track line. Protestant and defendant have connections with trunk lines at Pekin and at Peoria and compete in the handling of both local and through traffic. Defendant has terminal yards in Peoria proper and at East Peoria, a point on the east bank of the Illinois River but within the switching limits of Peoria. Complainant and protestant can interchange traffic with all of the trunk lines which enter Peoria proper, except the Chicago & North Western, without using defendant's facilities. The termini of the trunk lines serving Peoria from the south and east are at or near defendant's East Peoria yard, and traffic interchanged between these lines and complainant or protestant is handled by defendant.

The capital stock of protestant is jointly owned by the Chicago & Alton and Chicago, Rock Island & Pacific. The capital stock of defendant is jointly owned by the Illinois Central, Cleveland, Cincinnati, Chicago & St. Louis, Lake Erie & Western, Chicago, Peoria & St. Louis, Chicago & North Western, and Toledo, Peoria & Western. The six roads last named, also the Chicago & Alton and Pittsburgh, Cincinnati, Chicago & St. Louis, have contracts with defendant under which defendant agrees to perform terminal services for them and under which they are granted certain rights to the use of defendant's facilities. Complainant had a similar contract with defendant which expired March 31, 1921. Complainant declined to renew this contract and entered into an agreement with

the Chicago, Rock Island & Pacific whereby it uses the terminal facilities of that road at Peoria proper. But these facilities do not enable complainant to interchange traffic with defendant's tenant lines, and as before indicated defendant's facilities are used in making such transfer.

Cars coming into Peoria over the rails of complainant and going to defendant's tenant lines at East Peoria for outbound movement are delivered to defendant at Iowa Junction, usually in trains with cars otherwise destined, and are switched by defendant to the East Peoria yards, where the trains are broken up and the cars switched to designated tracks and placed in new trains for outbound movement. On this traffic defendant performs a train break-up, switching, and train make-up service. In the reverse direction defendant performs a similar service except that it does not make up trains for complainant, the cars being merely deposited in complainant's Bartlett yard situated just west of Iowa Junction. Cars coming into Peoria via protestant's line for outbound movement via the Chicago & North Western are delivered by protestant to defendant upon an interchange track in what is known as the Chicago & North Western yard. This yard was formerly operated by and as a part of the Chicago & North Western but is now leased and operated by defendant as a part of its terminal facilities. After defendant receives the cars from protestant it switches them to designated make-up tracks in the Chicago & North Western yard and places them in trains for outbound movement. Defendant performs no break-up service on this traffic and such switching as it performs seems to be largely, if not wholly, incidental to the make-up service for the Chicago & North Western. Cars which come in over protestant's rails and are to move outbound via lines whose rails terminate at East Peoria are taken in train lots by protestant to defendant's yards 90 and 91, which are situated approximately 1 mile from the end of protestant's rails. Defendant switches the trains from these yards to the East Peoria yards, where they are broken up and the cars switched to appropriate tracks and placed in trains for outbound movement. The service rendered by defendant upon this traffic is similar to that rendered in connection with cars coming from complainant's rails except that the trains are received at yard 90 or 91 instead of at Iowa Junction. In the reverse direction defendant delivers the cars on protestant's own rails but performs no make-up service.

It is the contention of the complaining and protesting parties that defendant's facilities, in so far as the traffic here involved is concerned, are mere terminal projections of the tenant lines; that it is the duty of the tenant lines to receive and deliver through traffic

at complainant's and protestant's rails and that defendant by reason of its relation to the tenant lines is precluded from making a separate charge. In determining these contentions we may look to the contracts between defendant and its tenants and the interpretation placed upon them by the contracting parties as evidenced by actual operation thereunder.

The preamble to the contract entered into in 1881 between defendant and its original proprietary lines recited that those lines "for the more convenient and economical transaction of their business and the better accommodation of the public, desire to extend their facilities in the city of Peoria, * * * and to that end have caused to be organized and incorporated * * * the said Peoria and Pekin Union Railway Company * * *." The contract further recited that defendant had acquired certain facilities and that the use and enjoyment of those facilities within the limitations of the contract were leased and demised to the proprietary lines, which at that time were the only tenants. The tenants were granted the use of defendant's main and passing tracks between Pekin and Peoria for the movement of their trains with their own power and the "right to the use of all the transfer tracks, side tracks, switches, and turnouts and other terminal facilities of the first party (defendant) * * * for the transfer of loaded and empty freight and other cars *by the said first party* from and to all freight houses, * * * and to and from the tracks and warehouses of other railroads, with which any of the tracks of the first party shall at any time be connected * * *." These provisions show that defendant was primarily created to perform terminal work which would normally be done by the tenants individually. But they also recognize a separate character in defendant in that its facilities may be used in purely terminal service only through defendant as the operating medium. So far as purely terminal service was concerned the tenants acquired only the right to have defendant handle their traffic.

The contract also provided that no stockholder should transfer its holding of capital stock of defendant without the consent of all other stockholders; that the board of directors of defendant should be selected by the proprietary lines and that each should at all times have equal representation on the board; that no managing officer of defendant should be selected without the approval of each proprietary line and that subordinate officers and employees should be subject to peremptory discharge on the request of any party to the contract. The contracts with the present proprietary lines are substantially similar and while disclosing a purpose on the part of those lines to keep the affairs of defendant closely within their

control, do not necessarily establish in defendant the status alleged by complainant. Furthermore, two of the tenant lines hold no stock in and have no control over the affairs of defendant.

Defendant is not shown as an intermediate concurring carrier in tariffs naming joint rates via Peoria, or in many instances as an originating or delivering carrier in tariffs of the tenant lines naming rates to and from Peoria. But this has no particular significance as our tariff regulations do not require the concurrence of purely intermediate or terminal switching lines in tariffs of this class. Defendant does not issue bills of lading for shipments originating on its rails and routed via tenants from Peoria or East Peoria. This also has little significance as originating carriers which perform switching services only do not usually issue bills of lading. *Order of May 20, 1911, Relative to Irregularities in Dating Bills of Lading.* There is some conflict in the testimony as to whether defendant pays per diem on cars which it handles in transfer service between its connections or participates in the payment of claims for loss and damage.

The contracts clearly grant to the tenants the right to full use of defendant's terminal facilities in having their traffic transferred between their rails and the rails of carriers with which defendant connects, and obligate defendant to perform the transfer service where demanded by the tenants. But we do not concur in the view expressed by complainant that having the right carries with it the obligation on the part of the tenants to exercise the right in full and pay the entire cost of the transfer service. The testimony shows that in the interchange of cars between tenant lines, each tenant has paid a part of the cost of the intermediate service rendered by defendant. The contracts provide that each tenant shall pay to defendant \$22,500 annually, plus a share of maintenance and upkeep costs on main tracks and certain appurtenant facilities used directly by the trains of the tenant or by defendant in performing transfer service for the tenant, and a reasonable sum per car which is to approximate as nearly as may be the actual cost of the service rendered by defendant. At present this latter charge is \$2.70 per car. As illustrative, on traffic coming into East Peoria via the Lake Erie & Western and going out from Peoria over the Chicago & North Western the inbound carrier pays defendant, in addition to the annual rental, \$2.70 per car plus its share of the upkeep and maintenance costs, and the outbound carrier likewise pays defendant, in addition to the annual rental, \$2.70 per car plus its share of the maintenance and upkeep costs. The total expense to each tenant under this arrangement is stated by defendant to be about \$4 per car. Not only has the above practice prevailed as to traffic inter-

changed between tenant lines of different ownership, but it has also been followed in the case of traffic interchanged between the different divisions of intervener, Chicago & Alton. It is clearly evident therefore that according to the interpretation placed upon the contracts by the parties thereto, defendant is not fully compensated by the amount it receives from one tenant or one division of intervener. If this is true as to traffic transferred for tenant lines, we do not see how there can be escape from the conclusion that defendant is not fully compensated by the tenant lines for the service it renders on traffic transferred between tenants and nontenants.

Carriers whose rails do not connect at interchange points may join in the establishment of through routes and joint rates and may employ a switching line to effect transfer of traffic between their rails. The extent to which each shall participate in compensating the switching line under such an arrangement is largely a matter of agreement between the employing carriers. In the absence of agreement to the contrary, it would not seem unfair that the expense should be shared equally. However, divisions are not at issue in these cases. The question for determination is whether defendant may lawfully maintain a tariff charge for service which it renders and is not being compensated for under its contracts with its tenants. It is interesting to note, however, that at the time of fixation of divisions of joint rates as between lines east of Peoria and those west complainant was a tenant of defendant and as such bore its share of the interchange expense. It has now withdrawn from tenancy and desires to shift to the tenant lines the portion of the expense which it formerly bore.

Southern Pacific Terminal Co. v. I. C. C., 219 U. S., 498, and *Chicago, Milwaukee & St. Paul Ry. v. Minn. Civic Assn.*, 247 U. S., 490, are cited as supporting the contention that defendant is a mere projection of the rails of the tenant lines. The facts and circumstances in those cases were materially different from those in the instant cases and we do not consider the decisions as controlling here. Defendant specifically reserves in the contracts with its tenant lines the right to perform terminal services and generally carry traffic for others, and this right it extensively exercises. It files tariffs with and makes reports to us and maintains local freight and passenger service. In *St. Louis, Springfield & Peoria R. R. v. P. & P. U. Ry. Co.*, 26 I. C. C., 226, we found defendant to be a common carrier subject to the act. The evidence in these cases substantiates that finding. We are of the opinion and find that defendant is an independent common carrier and as such entitled to just and reasonable compensation for the services which it renders. We are further of opinion and find that, with possibly the exception of traffic inter-

changed between protestant and the Chicago & North Western, defendant is not now compensated by the tenant lines for all of the service it renders in effecting transfers between those lines and non-tenant lines, and may maintain reasonable tariff charges for such uncompensated service, provided in so doing it does not practice unlawful discrimination.

Defendant performs interchange service between the rails of its tenants and the Chicago, Burlington & Quincy and Chicago, Rock Island & Pacific and makes no charge for such service and receives no compensation therefor except such as it receives under its contracts with its tenant lines. Complainant is in competition with the two lines mentioned in the handling of traffic from and to certain territories. Defendant, while stating that there is a distinction to be drawn between complainant and the two roads above mentioned in that the latter have more extensive terminals at Peoria, does not attempt to justify in full the failure to make a charge on traffic interchanged with these roads, and states that negotiations are now under way looking to the securing of compensation from those lines for services for which it is not now compensated by its tenants. We are of opinion and find that the charges under consideration are unjustly discriminatory and unduly prejudicial against complainant and protestant.

The records are not sufficiently developed to justify an expression of opinion as to what would constitute reasonable charges, but if defendant elects to remove the discrimination and prejudice by making a charge on traffic handled in interchange service between the Chicago, Rock Island & Pacific and Chicago, Burlington & Quincy and defendant's tenants, we will consider a petition to reopen the cases for the purpose of determining what would constitute reasonable charges. Orders requiring the removal of the unlawful discrimination and prejudice and cancellation of the suspended schedules will be entered.

No. 12448.¹

REPUBLIC OF FRANCE

v.

DIRECTOR GENERAL, AS AGENT, AND PHILADELPHIA
& READING RAILWAY COMPANY.

Submitted January 16, 1922. Decided April 18, 1923.

1. Charge of 7.5 cents per 100 pounds assessed by the Philadelphia & Reading Railway for delivery by car float of carload shipments of explosives to vessels in Wilmington Harbor, Wilmington, Del., found illegal if applied to shipments for export delivered by float to vessels tied up at piers on the Delaware side of Delaware River within the limits of Wilmington Harbor, as described in the tariff. Complaint dismissed without prejudice.
2. Demurrage and storage charges assessed at Wilmington on carload shipments of wet nitrocellulose and wet picric acid, for export, found to have been illegal. Reparation awarded.

C. R. Marshall for complainant.

William L. Kinter, John F. Finerty, and Cyrus B. Stafford for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, POTTER, AND LEWIS.

Lewis, Commissioner:

These two cases, filed on behalf of the Republic of France, by its director of administrative service in the United States, were heard together and will be disposed of in one report. Exceptions were filed by complainant to the report proposed by the examiner in both cases, and by the director general in No. 12450, and oral argument was had.

The complaint in No. 12448 alleges that the charge of 7.5 cents per 100 pounds assessed by the Philadelphia & Reading on over 500 carloads of smokeless powder, trinitrotoluol, and other explosives for their movement by car float from Delaware River Pier at Wilmington, Del., to vessels in midstream or alongside piers at Wilmington and Carney's Point, N. J., was unreasonable and unlawful in violation of sections 1 and 6 of the interstate commerce act and section 10

¹ This report also embraces No. 12450, Republic of France v. Director General, as Agent.

of the Federal control act. The complaint in No. 12450 attacks certain car-demurrage and storage charges assessed by the Philadelphia & Reading at Wilmington on various carloads of wet nitrocellulose and wet picric acid on the grounds that they were unreasonable and not authorized by tariffs. Reparation is asked in both cases. At the hearing complainant withdrew its allegation of unreasonableness under section 1 and rested both cases on the alleged violation of section 6.

NO. 12448.

The shipments embraced in this case consisted of various explosives in carloads, originating for the most part at Emporium, New Castle and Mount Union, Pa., Aetna, Ind., Hercules, Calif., and Fairmount and Syracuse, N. Y., which moved into Wilmington between April, 1918, and October, 1918, for transshipment overseas. Car floats were employed to effect delivery to vessels, and for this service a charge of 7.5 cents per 100 pounds was assessed by the Philadelphia & Reading in addition to the charge for transportation. Complainant contends that this charge was unlawful, and that it was entitled to free floatage under a tariff of defendant which provided that rates to Wilmington paying the Philadelphia & Reading and its connections 7 cents per 100 pounds or over would include delivery to vessels in Wilmington Harbor. The transportation rates in each instance exceeded 7 cents per 100 pounds.

During the period within which these shipments moved tariffs of the Philadelphia & Reading contained the following provisions:

FREIGHT SERVICE BY FLOATS.

Freight service by Floats on traffic except Coal, Coke, or Live Stock destined to and received from Foreign Ports via Wilmington, Del.

* * * * *

TRAFFIC DESTINED TO FOREIGN PORTS.

2. Unless otherwise provided by tariffs or herein, rates to Wilmington, Del. published and filed with the Interstate Commerce Commission, which pay Philadelphia & Reading Railway Company and its connections seven (7) cents per 100 pounds or \$1.40 per ton (net or gross as the case may be) or over, will include delivery to alongside vessels in Wilmington Harbor; such delivery to be made by car float.

The territory known as Wilmington Harbor is described in the tariff as all points on the Delaware River, New Castle, Del., to and including Government Wharf, Edge Moor, Del., and all points on the Christiana River between the Philadelphia & Reading draw-bridge and the mouth of Christiana River.

There was contemporaneously in effect a local commodity tariff applying on powder (smokeless), picric acid, nitrocellulose (wet), and high explosives, in carloads, in full float lots, minimum weight 120,000 pounds per single float, from Wilmington (Delaware River Pier), Del., to alongside of vessels lying in midstream off Delaware River Pier, Wilmington, or alongside vessels at Carney's Point, N. J., and Deep River Pier, N. J. This tariff provided the charge of 7.5 cents per 100 pounds for floatage that was assessed by the Philadelphia & Reading on the shipments in question.

The tariff on which complainant relies was not by its terms applicable on shipments floated to vessels in midstream or at piers on the New Jersey shore opposite Wilmington, whereas the tariff covering explosives specifically so applied. As to such shipments the allegation of a violation of section 6 is not sustained. The former tariff applied, however, on shipments floated to vessels tied up at piers on the Delaware side within the described limits of Wilmington Harbor territory. The locations of the vessels to which deliveries were made are not shown on the record, and in the absence of proof that the charge assailed was assessed or collected in any instance for the floatage of shipments to vessels at piers on the Delaware side of the Delaware River within Wilmington Harbor, the complaint will be dismissed without prejudice.

NO. 12450.

The complaint in No. 12450 presents the question whether the demurrage and storage charges assessed by defendant, Philadelphia & Reading, on carload shipments of wet nitrocellulose and wet picric acid, which moved into Wilmington during the year 1918 for transshipment to France, were in conformity with the applicable tariffs. For the purposes of this report it was agreed at the hearing that the shipments should be considered export shipments, leaving to complainant to establish that fact in the future by satisfactory proof, if that course becomes necessary.

The record shows that during the year 1918 large quantities of wet nitrocellulose and wet picric acid were received at Wilmington over the Philadelphia & Reading for transshipment; that the shipments were held for varying periods before exportation; and that for their detention defendant assessed and collected demurrage charges as provided in its tariff of rules governing car demurrage, together with storage in accordance with its local storage tariff applicable at Wilmington. Complainant contends that the demurrage tariff was not applicable, and that the charges for storage were not in accordance with the governing tariff.

The rules covering car demurrage during the period of the complaint were made effective February 10, 1918, as a part of General Order No. 7 of the Director General of Railroads. The tariff provided (1) that cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purpose would be subject to the rules therein published, with certain exceptions not material here; (2) that 48 hours' free time would be allowed for loading and unloading on all commodities, except that—

Cars containing freight for transshipment to vessel at Delaware River Pier, Wilmington, Del.; Port Richmond, Philadelphia, Pa.; Port Reading, N. J.; and Chester, Pa.; will be allowed free time and be subject to charges as specified in P. & R. Ry., I. C. C.—J—No. 6356, * * * I. C. C.—J—No. 6357, * * * I. C. C.—J No. 6378, * * * supplements thereto and reissue thereof,

and (3) that after the expiration of free time the demurrage charges per day or fraction thereof would be \$3 for each of the first four days, \$6 for each of the next three days, and \$10 for each succeeding day. General Order No. 7, published in the demurrage tariff as a part thereof, specifically stated that the charges named therein superseded all those named in existing tariffs except such as applied on foreign export freight awaiting ships at ports, together with other exceptions which need not be considered.

Philadelphia & Reading tariff I. C. C.—J—No. 6357, referred to in the demurrage tariff, contained the rules and charges applicable to the storage of freight at all points on the Philadelphia & Reading system except Philadelphia, Pa. Item 1, rule 1, provided that freight, other than company material, received for delivery or held to complete a shipment or for forwarding directions if stored in railroad stations would be subject to the rules therein. Item 2 contained rules applicable to freight, other than coal and coke, for transshipment by water at Chester-Marcus Hook, Pa., and Wilmington. Rule 1(a) provided that carload shipments of explosives or other dangerous articles would be subject to both demurrage and storage rules, and for the latter referred to rule 6 in the same tariff. Under this rule, when read in connection with rule 3, "Free Time Allowed," the storage charges on carload shipments of the most dangerous explosives were \$5 per day after the expiration of 24 hours, and on the less dangerous articles \$2 per day after 48 hours, in addition to the regular demurrage charges. Item 2, covering freight for transshipment, provided 10 days' free time, and thereafter storage charges at the rate of 1 cent per 100 pounds for the first 10 days and 0.5 cent per 100 pounds for each succeeding 10 days or fraction thereof, and contained no provision for higher charges on explosives.

Complainant contends that the rules under item 1 were applicable on domestic freight, and that the only charges that could lawfully be applied on export freight were those specified in item 2. It claims exemption from demurrage charges, and asserts that it was entitled to the benefit of the free time and storage charges applicable on export traffic. Defendant, on the other hand, takes the position that the explicit provisions covering free time and storage on explosives and other dangerous articles in effect removed those commodities from the general rules and placed them in a separate division of the tariff.

While it may have been the intention of defendant to limit the free time on export shipments of explosives to either 48 or 24 hours and to provide for storage thereafter at the rate of \$2 or \$5, depending upon the character of the commodities, and to charge demurrage in accordance with its general demurrage tariffs, the tariffs failed to carry that intention into effect. The commission has frequently held that tariffs must be construed strictly according to their terms, and that the intention of the framers is not controlling. Rule 3 of the tariff, which provided for 48 hours' free time on all commodities except dangerous explosives, is in conflict with the provisions of item 2, the latter applying explicitly on export traffic and authorizing 10 days' free time, with specified charges for storage thereafter, and the charges in the demurrage tariff were expressly made inapplicable to export freight awaiting vessels at ports.

We find that the demurrage charges assessed on the shipments that were exported from Wilmington were illegal; that the storage charges thereon were illegal to the extent that they exceeded those that would have accrued at the rate of 1 cent per 100 pounds for the first 10 days after the expiration of 10 days' free time, and 0.5 cent per 100 pounds for each succeeding 10 days or fraction thereof; and that complainant paid and bore the charges and is entitled to reparation, with interest. Upon compliance with Rule V of our Rules of Practice and due proof of exportation we will consider the entry of an order awarding reparation.

68 I. O. O.

No. 12320.

REPUBLIC OF FRANCE

v.

DIRECTOR GENERAL, AS AGENT.

Submitted January 16, 1922. Decided April 13, 1922.

Rates charged on new steel rails and steel plates from Galveston, Tex., to New Orleans, La., found to have been unreasonable. Reparation awarded.

C. R. Marshall for complainant.

Royal T. McKenna and *Cyrus B. Stafford* for defendant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, POTTER, AND LEWIS.

LEWIS, *Commissioner*:

The report proposed by the examiner was served upon the parties. Exceptions thereto were filed by complainant and oral argument was had.

The Republic of France, through its director of administrative services in the United States, by complaint filed February 16, 1921, alleges that the rates charged for the transportation of numerous carloads of steel rails and steel plates moving in April, May, and November, 1919, from Galveston, Tex., to New Orleans, La., were unreasonable and unduly prejudicial, in violation of sections 1 and 8 of the interstate commerce act and section 10 of the Federal control act. Reparation only is asked.

The shipments consisted of 74 carloads of new open-hearth steel rails and 19 carloads of blue annealed soft-steel plates 39.37 inches wide, 78.74 inches long, and from 0.08 to 0.12 inch, approximately, thick, and, with one exception, moved from Galveston to New Orleans via the Southern Pacific lines in April and May, 1919. One carload of rails moved in November, 1919. The rails had been previously shipped to Galveston for export from South Chicago, Ill., and Gary, Ind., and the plates from Indiana Harbor, Ind., but for some reason not disclosed of record they were subsequently reshipped to New Orleans to be there exported.

Prior to May 30, 1919, there was no joint commodity rate on new rails from Galveston to New Orleans, and charges were collected on the 74 carloads of rails on the basis of the combination on Lake Charles, La.; \$3.90 per long ton from Galveston to Lake Charles, and a commodity rate of 20.5 cents per 100 pounds beyond. This was

CS I. C. C.

equivalent to \$8.49 per long ton or \$7.58 per net ton for the through transportation. A joint rate of 34 cents per 100 pounds, or \$6.80 per net ton, was contemporaneously in effect from Galveston to New Orleans on old rails 20 feet and over in length, and also a rate of \$6.80 per long ton in the opposite direction from New Orleans to Galveston, applicable on both new and old rails. This latter rate was equivalent to \$6.07 per net ton. Effective May 30, 1919, in accordance with freight rate authority No. 5164, the 34-cent rate on old rails from Galveston to New Orleans was made applicable on rails of all descriptions. The rate applicable on the shipments of steel plates from Galveston to New Orleans was the fifth-class rate of 56.5 cents per 100 pounds, and charges on 10 of the shipments were collected at this rate. The combination rate applying on rails was assessed on the other nine shipments, and they were therefore undercharged. The rate on steel plates from New Orleans to Galveston was 40.5 cents, or 16 cents less than the rate eastbound.

Complainant contends that a reasonable maximum rate to have charged on the rails was \$6.80 per net ton, which, as stated, was the rate in effect eastbound on old rails, and on and after May 30, 1919, on new rails. The rate established on that date, it will be observed, exceeded the rate from New Orleans to Galveston, as the latter was on the long-ton basis.

The rate charged on the rails from Galveston to New Orleans, equivalent to \$7.58 per net ton, yielded 18.49 mills per net ton-mile for the distance of 410 miles. The rate of \$6.80 per net ton, subsequently established, yielded 16.59 mills, while the earnings under the rate on rails in the opposite direction, reduced to the net-ton basis, were 14.8 mills. Rates cited by complainant for the purpose of showing the general level of the rates on rails in this territory include the following: \$6.80 per long ton, equivalent to \$6.07 per net ton, from New Orleans to Dallas, Tex., 515 miles; Fort Worth, Tex., 547 miles; and Waco, Tex., 547 miles, yielding earnings of 11.79 mills, 11.1 mills, and 11.1 mills per net ton-mile, respectively; \$6.80 per long ton, or \$6.07 per net ton, from Fort Worth to New Orleans; \$3.40 per long ton, or \$3.04 per net ton, from Galveston to Shreveport, La., 280 miles, yielding 10.86 mills per net ton-mile; and \$4.10 per long ton, or \$3.60 per net ton, from Galveston to Texarkana, Ark.-Tex., 352 miles, yielding 10.23 mills per net ton-mile. These rates all applied on both new and old rails.

The application of the rate of 34 cents per 100 pounds from Galveston to New Orleans to shipments of new rails was explained as due to a general revision of rates on rails in Texas, under which it was intended to eliminate from the descriptions carried in various tariffs all reference to length and whether old or new. Defendant concedes

that this rate was fairly comparable with the rates on new rails in the same territory and was a normal rate for domestic traffic. It argues, however, that a higher rate was justified on traffic intended for export because of extra switching and handling expenses encountered on such traffic. No distinction was made in the tariff between export and domestic traffic, and the rate applied on either. As a rule, where different rates apply on the two classes of traffic, those on export traffic are lower. The justification for a lower rate from New Orleans to Galveston was based on the greater volume of traffic westbound, but it was admitted that there has been no substantial movement of rails between these points in either direction. Under such circumstances, and where the conditions affecting the transportation in both directions are substantially the same, there should be no material disparity in the rates.

Complainant takes the position that in view of the similarity in the transportation characteristics of steel plates and steel rails, and the fact that they are classified the same in southern, western, and official classifications, the rate of 56.5 cents charged on the shipments of plates was unreasonable and should not have exceeded the rate on rails, or, in any event, should have been no higher than 40.5 cents, the rate applying westbound. The rate charged yielded 27.56 mills per ton-mile as contrasted with earnings of 19.76 mills under the rate from New Orleans to Galveston, and 16.59 mills under the rate on rails. It appears that the 40.5-cent rate was based on a former fifth-class rate from New Orleans to Galveston and points grouped therewith, and was lower than the rates generally prevailing on iron and steel articles from and to the same points. A rate of 47.5 cents applied from New Orleans to Galveston on such commodities as chain, cable, wire, steel bars, angles, tin plate, and roofing and sheet iron.

We find that the legally applicable fifth-class rate of 56.5 cents per 100 pounds charged on the shipments of steel plates was unreasonable to the extent that it exceeded 47.5 cents, and that the combination rate charged on the shipments of rails was unreasonable to the extent that it exceeded 34 cents per 100 pounds.

We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued on the basis of the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of our Rules of Practice.

68 I. C. C.

No. 12190.¹

A. B. SMITH ET AL.

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted January 21, 1922. Decided April 10, 1922.

So-called net rates on hardwood logs, in carloads, for manufacture and reshipment, from Proctor City, Wynnburg, Miston, and Lenox, Tenn., to Bondurant, Ky., found not unreasonable or unduly prejudicial. Rates on like traffic from Menglewood, Tenn., to Bondurant, Ky., found unreasonable. Rates on like traffic from Miston, Tenn., to Trimble, Tenn., found unreasonable. Maximum reasonable rate from Miston to Trimble applicable on interstate traffic prescribed for the future. Reparation awarded.

J. K. MacDonald, jr., and C. W. Craig for complainants.

A. P. Humburg, W. S. Horton, R. V. Fletcher, and John F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

Exceptions were filed by complainants and defendants to the report proposed by the examiner and the case was orally argued.

A. B. Smith and E. K. Smith, copartners operating a number of hardwood lumber mills in western Kentucky and southeastern Missouri, allege by complaints filed in February, 1921, that the rates charged for the transportation of numerous carloads of hardwood logs in No. 12190 from Menglewood, Tenn., to Bondurant, Ky., between March and September, 1920, in No. 12327 from Proctor City, Wynnburg, Miston, and Lenox, Tenn., to Bondurant, during 1919 and 1920, and in No. 12327 (Sub-No. 1) from Miston to Trimble, Tenn., in October, November, and December, 1919, to be manufactured and reshipped, were unjust, unreasonable, unduly preferential, and unduly prejudicial, to the extent that they exceeded a distance scale of rates on like traffic applicable on the southern lines of the Illinois Central. We are asked to award reparation and to prescribe reasonable and nonprejudicial rates for the future. Rates will be stated in cents per 100 pounds.

¹ This report embraces No. 12327, Same v. Director General, as Agent, Chicago, Memphis & Gulf Railroad Company, et al., and No. 12327 (Sub-No. 1), Same v. Same.

Defendant Chicago, Memphis & Gulf, hereinafter called the C. M. & G., is approximately 49 miles in length, and extends northerly from Deer, Tenn., a junction with the Dyersburg, Tenn., branch of the Illinois Central, to Hickman, Ky., a junction with the Nashville, Chattanooga & St. Louis. The Dyersburg branch connects with the main line of the Illinois Central at Dyersburg, 8.7 miles east of Deer, and extends west through Deer 11 miles to Stephens Junction, Tenn., where the line divides, one part extending 4 miles north to Menglewood and the other 5 miles south to Tiger Tail, Tenn. The track between Dyersburg and Deer, owned by the Illinois Central, is also used by the C. M. & G. Bondurant, Proctor City, Wynnburg, Miston, and Lenox are on the C. M. & G. Trimble is on the main line of the Illinois Central, 16 miles north of Dyersburg.

Complainants have a sawmill at Bondurant with a capacity of 35,000 feet of lumber per day, and own tracts of timber at the points of origin of these shipments. Lumber mills are also located at Hickman, Dyersburg, and Trimble.

The C. M. & G. began operation in 1906 as an independent line, but its entire capital stock was purchased by the Illinois Central about January 1, 1913. Since that time it has been separately operated, but its officers are also officers of the Illinois Central. The Illinois Central does not own any of the bonds of the C. M. & G.

Taking up first the movement from Menglewood to Bondurant, the following rates were assessed: On 89 carloads which moved prior to August 26, 1920, 6 cents; on 11 carloads which moved prior to August 26, 1920, 8.5 cents; on 13 carloads which moved after August 26, 1920, 10.5 cents. The rates legally applicable prior and subsequent to August 26, 1920, were combination rates of 8.5 and 10.5 cents, respectively, consisting of the local rate on logs from Menglewood to Dyersburg and the rate, for manufacture and re-shipment, from Dyersburg to Bondurant. Apparently the net re-shipping rate was used in making up both factors of the combination in arriving at the charge of 6 cents on the first 89 shipments. This was improper, as the logs were sawed into lumber at Bondurant and reshipped from that point. Eighty-nine shipments were therefore undercharged.

Traffic from Menglewood to Bondurant is actually moved from Menglewood to Dyersburg, 15 miles, and thence forwarded to Bondurant, 44 miles, a total distance of 59 miles. The movement from Deer to Dyersburg and the back haul from Dyersburg to Deer, a total distance of 7.4 miles, is claimed by the defendants to be necessary from an operating standpoint, since there are not sufficient switching facilities at Deer. Complainants show that there is

a spur track 540 feet long at Deer and a siding 2,000 feet long 0.75 mile east of Deer. The distance rates were assessed upon the basis of 59 miles. Deer is not shown as a station on the lines of the Illinois Central or the Dyersburg branch in the distance table of that line. Agent Leland's list of open and prepay stations, covering the period of movement, shows it as a nonagency station for the handling of less-than-carload freight only.

Contemporaneously there were in effect from Menglewood and stations on the Dyersburg branch to Hickman, 8 miles north of Bondurant, rates on logs, for manufacture and reshipment, of 4.5 cents prior to August 26, 1920, and 5.5 cents thereafter. These rates applied over the C. M. & G. through Bondurant. On August 27, 1921, subsequent to the hearing, the rate of 5.5 cents was made applicable from the same points of origin to Bondurant. Defendants contend that the rate from Menglewood to Hickman was a water-compelled rate forced by potential competition on the Mississippi River. Hickman is on the river, but Menglewood is 10 miles from it and the logs would have to be towed upstream. The Mengle Box Company has a lumber mill at Hickman to which it ships logs from Menglewood. It performs its own switching at Menglewood and also performs a switching service on all cars shipped by the complainant from Menglewood, for which a charge is made. There was no allegation of undue prejudice to Bondurant as against Hickman.

During 1919, 355 carloads of logs moved from Proctor City to Bondurant, 10 miles, and charges were collected at the applicable rate of 2.5 cents. Between September, 1919, and February, 1920, inclusive, 69 carloads moved from Wynnburg to Bondurant, 17 miles, and charges were collected at the applicable rate of 4.5 cents. Between September, 1919, and January, 1920, inclusive, 53 carloads moved from Miston to Bondurant, 28 miles, and charges were collected at the applicable rate of 4.5 cents. Four cars moved from Lenox to Bondurant, 34 miles, during January, 1920, and charges were collected at the applicable rate of 4.5 cents. All the above shipments were manufactured and reshipped from Bondurant to points north of the Ohio River.

Sixty-eight carloads moved from Miston to Trimble, 32 miles, between October and December, 1919, inclusive, and charges were collected at the applicable joint rate of 7 cents. These logs were sold to the Leigh Banana Case Company and were manufactured and reshipped at Trimble.

The record does not show the destinations of the manufactured product outbound from Trimble. The rates on logs, for manufacture and reshipment, restrict the outbound movement of lumber from the milling point to the lines of the C. M. & G. and the Illinois Central.

The outbound rates on lumber from Bondurant are the same as from Dyersburg and are not under attack.

In brief the complainant's contention is that the maintenance of a scale of distance rates on logs, for manufacture and reshipment, between points on the Illinois Central and points of the C. M. & G., and between stations on the C. M. & G., higher than is contemporaneously maintained on the Illinois Central (southern lines), including the Dyersburg branch and other branches, results in rates which are unreasonable and unduly prejudicial. There is no evidence of unjust discrimination under section 2.

A comparison of the scales of so-called net rates, minimum weight 40,000 pounds, in effect prior to August 26, 1920, on logs, for manufacture and reshipment, is shown below:

Distance.	C. M. & G.	I. C. and Y. & M. V.	Distance	C. M. & G.	I. C. and Y. & M. V.
	Cents.	Cents.		Cents.	Cents.
6 miles or less.....	2	1.5	35 miles and over 30.....	4.5	3
10 miles and over 6.....	2.5	1.5	40 miles and over 35.....	4.5	3
15 miles and over 10.....	3	1.5	45 miles and over 40.....	4.5	3.5
20 miles and over 15.....	4.5	2	50 miles and over 45.....	4.5	4
25 miles and over 20.....	4.5	2	55 miles and over 50.....	4.5	4
30 miles and over 25.....	4.5	2.5			

Prior to August 26, 1920, the C. M. & G. published a scale of distance rates on stave bolts and heading bolts, split or round, but of dimensions not exceeding 38 inches in length. For distances over 6 miles up to and including 44 miles this scale is from 0.5 cent to 2 cents lower than the scale of rates on logs, and for distances of 6 miles or less than 45 miles and not over 55 miles the same as the rates on logs. The Illinois Central publishes for its southern lines a scale of distance rates on various kinds of billets for manufacture and reshipment via its line. For distances up to 55 miles this scale is from 0.5 cent to 1 cent higher than the rates on logs. Defendants explain that the rates on bolts to be used for staves and headings were special rates designed by the carriers to encourage the shipment of these bolts, which were being burned or used for cordwood along the line of the C. M. & G., a condition which did not exist on branch lines of the Illinois Central. The distinction between bolts and billets is dealt with in *Cairo Asso. of Commerce v. Director General*, 62 I. C. C., 701.

In *North Vernon Lumber Co. v. I. O. R. R. Co.*, 61 I. C. C., 355, we found combination rates on hardwood logs, in carloads, for manufacture and reshipment from stations on the Yazoo & Mississippi Valley in Mississippi to Dyersburg and Trimble, unreasonable to the extent that they exceeded, for distances up to and including 220 miles, the individual distance scales of net rates of the Yazoo & Mis-

Mississippi Valley and the Illinois Central. These two lines had the same distance scale of net rates, but they had refused to apply it as a joint continuous distance scale between points on the Yazoo & Mississippi Valley and points on the Illinois Central. We said:

The rates assailed are conditioned upon the manufactured product being shipped out over the line bringing in the logs, and it is only fair that they should be compared with log rates similarly conditioned. Defendants' individual scales of net rates have been maintained for many years without change other than under general rate advances; they are in line with the net rates applicable on other lines in the same territory for the distances here concerned up to 220 miles; and the earnings thereunder appear to be as high as the average earnings of these carriers on all revenue freight.

The distances there considered ranged from 88 to 312 miles.

The rate on logs, for manufacture and reshipment, in effect on the Missouri Pacific between stations in Arkansas and from points in Arkansas to Memphis, Tenn., for distances of 50 to 75 miles, was 4.5 cents prior to August 26, 1920. The net rate on the same commodity contemporaneously in effect on the lines of the Mobile & Ohio between Kentucky, Tennessee, and Alabama points, for distances of 50 to 75 miles, was 4 cents. These rates are compared with the Illinois Central distance scale, for distances of 60 to 70 miles, of 4.5 cents. Other comparisons submitted by complainant of distance scales of net rates on logs on various lines in the South, such as the Southern, the Missouri Pacific, and the Mobile & Ohio, for distances up to 40 and 50 miles, show that the scale of the Illinois Central compares favorably with other lines in southern territory.

The average loading of the shipments from Menglewood to Bondurant and from Miston to Trimble was 46,045 pounds. The shipments from Proctor City and other points on the C. M. & G. to Bondurant were not weighed and charges were assessed at the minimum weight of 40,000 pounds. An average of 87 per cent of the cars used were returned to the terminals empty. Defendants admit that this is somewhat better than the average for log movements, as the empty-return movement is usually 100 per cent. Many of these cars were loaded outbound with lumber, but defendant's agent refused to allow complainants to load further outbound shipments on flat and open-top cars on account of the need for such cars elsewhere. Complainants can load 60 to 80 per cent of their output on flat and open-top cars and prefer in most cases to do so. The weighted-average revenue per car as collected was \$19.05 and as proposed by complainants would be \$10.03.

The principal tonnage on the C. M. & G. is forest products and the income account of this line has shown a deficit which has increased from \$8,539.85 in 1917 to \$119,404.02 in 1920. The country traversed is sparsely settled and because of its location it can not

be utilized for through traffic. Tests have shown that trains on the C. M. & G. utilize only 38 per cent of the engine rating northbound and 32 per cent southbound, as compared with 70 to 93 per cent on the Illinois Central between Memphis, Tenn., and Fulton, Ky., northbound, and 79 to 95 per cent southbound.

An analysis of the traffic resources of the road during the years 1914, 1919, and 1920 shows that, while the tonnage of forest products has greatly decreased, the tonnage of agricultural products and coal and the total revenue from all commodities has increased. The timber on the line of the C. M. & G., and on the Dyersburg branch is of low grade, the higher grades having been worked out. The land along the line of the C. M. & G. is being cleared of stumpage and is very productive. Along the Dyersburg branch there has been little if any agricultural development.

The net rates on logs are lower than the rates on sand, gravel, common brick, coal, fertilizer, and other low-grade commodities, in effect on the C. M. & G. The local rates and the earnings thereunder on logs and other low-grade commodities, such as clay, sand, gravel, and common brick, from and to points in Kentucky and Tennessee for comparable distances on the Nashville, Chattanooga & St. Louis and the Illinois Central were considerably less than rates and earnings on logs from Menglewood to Bondurant.

The C. M. & G. is treated as a separate line. The rates applicable to any movement between stations on it and stations on the Illinois Central, such as the movement from Menglewood to Bondurant, are, in the absence of a joint rate, combinations of the local rates on logs to the junction point, and the rates for manufacture and re-shipment beyond. These combinations are considerably higher than rates under the Illinois Central distance scale of net rates for the same distances, due to the fact that the local rates, which are higher than the net reshipping rates, must be applied to the junction point, and to the fact that the scale of net rates on the C. M. & G. is higher than that of the Illinois Central. The rate from Miston to Trimble, 32 miles, is a joint rate and was 7 cents prior to August 26, 1920. The present rate is 9 cents. Under the Illinois Central net scale, which is applicable to Trimble from points on the Dyersburg branch, the rate for 32 miles would be 3 cents.

The average car earning prior to August 26, 1920, from Miston to Trimble, based on the average weight of the 68 cars shipped by complainant to Trimble of 43,290 pounds, was \$30.30 per car. Based on the present rate it would be \$38.96. The car-mile earning prior to August 26, 1920, from Miston to Trimble was 95 cents, and the present car-mile earning is \$1.22, while from Menglewood, which is 31 miles from Trimble, the rate prior to August 26, 1920, was 3

cents and the present rate is 4 cents. On the same average weights used from Miston to Trimble, 43,290 pounds per car, the average car earning would be \$12.99 prior to August 26, 1920, and \$17.32 under the present rate and the car-mile earnings 42 cents and 56 cents, respectively. Under present rates the excess earnings under the rate from Miston to Trimble over those under the rate from Menglewood to Trimble is \$21.64 per car and 66 cents per car-mile.

Defendants show a large number of rates on logs, as of August 25, 1920, between points in Tennessee and Kentucky, mostly from points on the Birmingham & Northwestern, and other points in this territory, for two-line hauls, constructed on the basis of the local rate to the junction point and the net reshipping rate beyond, which for comparable distances compare favorably with the rate of 8.5 cents from Menglewood to Bondurant and the rate of 7 cents from Miston to Trimble.

Complainants' statement that the distance scale of net rates on logs applying on the Illinois Central also applies as a joint continuous distance scale on all branches of the Illinois Central, except the C. M. & G., is not denied by the defendants. Their position is that the Illinois Central has no branch lines in the territory south of the Ohio River which are fairly comparable to the C. M. & G., and that most of the extensions of the Illinois Central and the Yazoo & Mississippi Valley were built primarily for the purpose of getting out timber. In this connection it may be well to quote the defendants' testimony:

While the service and conditions on certain branches of the Illinois Central may justify higher rates on the main line than on other branches, it is difficult to fix rate adjustments which will reflect these differences in conditions, and, generally speaking, where the main line and branches are operated as one line, the same basis of rates is applied in order to get a uniform basis, *it being felt that the conditions on one section would be offset by conditions on another.* No such difficulty is encountered on the C. M. & G. Its charges can be segregated, as the road was built entirely independent of the Illinois Central, has been operated entirely separate from the Illinois Central, and its identity has been preserved.

This argument lacks force, as there should be a higher rate of return on the investment to cover amortization on a branch line which will have only junk value when the timber is exhausted, than upon a branch line which serves a growing agricultural community. The latter produces traffic for the main line, although it may not show an individual profit. The difficulty of segregating the accounts of branch lines is not entitled to great weight. For rate-making purposes, the C. M. & G. should be considered as a branch line of the Illinois Central. From this it does not follow that rates on the C. M. & G. should be the same as upon the main lines of the Illinois Central.

We find that the rates assailed from Menglewood to Bondurant were unreasonable to the extent that they exceeded 4.5 cents per 100 pounds prior to August 26, 1920, and 5.5 cents per 100 pounds on and after that date; that the rates assailed from Proctor City, Wynnburg, Miston, and Lenox to Bondurant were not unreasonable or unduly prejudicial; that the rates assailed from Miston to Trimble were, are, and for the future will be unreasonable to the extent that they exceeded, exceed, or may exceed 4.5 cents per 100 pounds; that complainants made the shipments as described and paid and bore the charges thereon, and have been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. In Nos. 12190 and 12327 (Sub-No. 1) complainants should comply with Rule V of the Rules of Practice. The complaint in No. 12327 will be dismissed. The rate found reasonable from Menglewood to Bondurant on and after August 26, 1920, was subsequently established. In No. 12327 (Sub-No. 1) an order for the future will be entered with respect to the rate from Miston to Trimble applicable only to hardwood logs, for manufacture and reshipment to interstate destinations.

68 I. C. C.

No. 11877.¹

BURNS & HANCOCK FIRE BRICK & CLAY COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted January 21, 1922. Decided April 10, 1922.

Rates on mine-run bituminous coal, in carloads, from certain mines in the Clinton and Brazil districts in Indiana, to complainants' plants at West Montezuma, Ind., Brazil, Ind., and near Terre Haute, Ind., during Federal control, found unreasonable. Reparation awarded.

R. B. Coapstick for complainants.

K. L. Richmond, Homer T. Dick, Fred W. Heid, and John F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

These cases were heard separately but present similar issues and will be disposed of in one report. Exceptions were filed by complainants to the reports proposed by the examiners and the cases were orally argued before us. Our conclusions differ from those recommended by the examiners.

Complainants are manufacturing corporations having plants located at the points in Indiana hereinafter specified. The complaints allege that the rates charged subsequent to June 24, 1918, for the transportation of mine-run bituminous coal in carloads from mines in the Clinton and Brazil districts in Indiana to industries at West Montezuma, Brazil, and a point near Terre Haute in the same State, were unjust and unreasonable in violation of section 1 of the interstate commerce act and section 10 of the Federal control act. Reparation is sought. As the traffic was intrastate we will consider only the rates in effect from June 25, 1918, to the termination of Federal control, February 29, 1920. Rates herein are stated in cents per net ton.

¹ This report also embraces No. 11908, Hydraulic-Press Brick Company v. Director General, as Agent, Chicago & Eastern Illinois Railroad Company, et al.; No. 11908 (Sub-No. 1), National Fire Proofing Company v. Director General, as Agent, Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company, et al.; and No. 12456, Grasselli Chemical Company v. Director General, as Agent, Chicago & Eastern Illinois Railroad Company, et al.

The shipments to the Burns & Hancock Fire Brick & Clay Company, complainant in No. 11877, originated at Deering mine No. 8, and other mines in the Clinton district, and moved to its plant at West Montezuma over the Chicago & Eastern Illinois, hereinafter called the Eastern Illinois, an average distance of about 15.5 miles. Complainants in No. 11908, the Hydraulic-Press Brick Company, and in No. 11908, Sub-No. 1, the National Fire Proofing Company, have plants located about 1 mile north of and within the switching limits of Brazil, the former on the tracks of the Pittsburgh, Cincinnati, Chicago & St. Louis, and the latter on the tracks of the Eastern Illinois. The shipments to the Hydraulic-Press Brick Company originated at the Black Betty mine in the Clinton district and moved in local or through trains to Otter Creek Junction, about 9 miles, and from there to the north yards of the Eastern Illinois at Brazil, where delivery was made by the Pittsburgh, Cincinnati, Chicago & St. Louis, a total distance of about 30 miles. Some of the coal for the National Fire Proofing Company, also, originated at Clinton mines and similarly moved to Brazil, where delivery was made by the Eastern Illinois. Two shipments for this complainant were made from mines in the Brazil district, one located on the Otter Creek branch of the Eastern Illinois, and the other on the Indiana division of the same carrier, the distances being approximately 6 and 10 miles, respectively. The shipments to complainant in No. 12456, the Grasselli Chemical Company, moved from mines in the Clinton district to its plant, which is located about 6 miles north of Terre Haute, over the Eastern Illinois, a distance of approximately 27 miles.

On November 15, 1915, a specific rate of 25 cents was in effect from Clinton to West Montezuma. To the other destinations distance rates applied which for 5 miles and under were 20 cents; for 15 miles and over 5 miles, 25 cents; and for 30 miles and over 15 miles, 30 cents. Through successive increases these distance rates had become on June 24, 1918, 35, 40, and 45 cents, respectively. Likewise the specific rate to West Montezuma had become 40 cents. On June 25, 1918, pursuant to General Order No. 28 of the Director General of Railroads this rate was increased to 60 cents, and the distance rates were made 60 cents for 15 miles and under, and to 70 cents for 30 miles and over 15.

On October 5, 1918, rates from Indiana coal mines were revised by the director general and published as group rates. The minimum rate between points in one group or from one group to an adjacent group was fixed at 70 cents, and applied for distances ranging from 2 or 3 miles to 50 miles, and for both single and joint line hauls. This rate of 70 cents was charged complainants on coal from the Clinton group to Brazil and the plant near Terre Haute. West

Montezuma, however, was not included within the group accorded a rate of 70 cents from Clinton mines, and coal for the Burns & Hancock Fire Brick & Clay Company at that point was charged a rate of 85 cents, until June 28, 1919, when the rate was reduced to 70 cents.

On August 1, 1919, the rate for single-line hauls from the Brazil mines to Brazil and from Brazil to Clinton was reduced to 60 cents, at the same time that a like reduction was made in the rates from the Brazil and Clinton groups to Terre Haute. Two shipments of coal from the Brazil mines to the National Fire Proofing Company which were made after this reduction were therefore charged the 60-cent rate. No change was made in the rate of 70 cents from the Clinton group to Brazil at this time or until after the return of the railroads to corporate control. In September, 1920, subsequent to the period of this complaint and also to the general increases of 1920 the Public Service Commission of Indiana prescribed maximum rates on all coal movements within that State of \$10 per car for switching movements not involving road hauls, 55 cents for distances of 10 miles and under, and 65 cents for distances over 10 and under 30 miles.

Complainants in the instant cases contend that the rates charged during the period of these complaints were unreasonable to the extent that they exceeded, for the following movements: A rate of 45 cents from mines in the Clinton district to the plant of the Burns & Hancock Fire Brick & Clay Company at West Montezuma; 50 cents from mines in the same district to the plant of the Grasselli Chemical Company near Terre Haute; 50 cents from mines in that district to the plants of the Hydraulic-Press Brick Company and the National Fire Proofing Company at Brazil; 35 cents from the mine located on the Otter Creek branch of the Eastern Illinois in the Brazil district to the plant of the last-named complainant; and 40 cents from the mine on the Indiana division of the same railroad to the same destination.

In *Utilities Development Corp. v. P., C., C. & St. L. R. R. Co.*, 56 I. C. C., 694, we held unreasonable a group rate of 70 cents, applying on coal during the period of Federal control from Bicknell, Ind., to Edwardsport, Ind., a distance of 4.4 miles. The rate there assailed applied for distances ranging from 2 to 45 miles. Condemning as manifestly illogical and inequitable an adjustment with such glaring disparities in distances, we prescribed as reasonable a rate of 40 cents.

In *Clinton Paving Brick Co. v. Director General*, 66 I. C. C., 338, we had under consideration group rates applying during Federal control from the same producing districts as those named in these complaints to plants of industries located in the same or similarly

situated destination groups. We held the rates there assailed unreasonable to the extent that they exceeded, for the movement from Clinton mines to Mount Silica, a point just beyond West Montezuma, a rate of 60 cents; from Clinton mines to the plants of two industries at Brazil, a rate of 60 cents; and from certain mines in the Brazil district to industries at that place, rates of 60 and 45 cents, according to the character and extent of the service.

We find that the rates here assailed were unreasonable to the extent that they exceeded 60 cents per net ton from mines in the Clinton district to Brazil, West Montezuma, and the plant of the Grasselli Chemical Company, near Terre Haute, and 45 cents per net ton from the mines on the Eastern Illinois in the Brazil district to the plant of the National Fire Proofing Company at Brazil. We further find that complainants made shipments as described and paid and bore the charges thereon at rates herein found unreasonable; that they have been damaged to the extent of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest.

Complainants should comply with Rule V of the Rules of Practice.

68 I. C. C.

No. 12425.¹

FORT WAYNE ROLLING MILL CORPORATION

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, MILWAU-
KEE & ST. PAUL RAILWAY COMPANY, ET AL.

Submitted January 20, 1922. Decided April 10, 1922.

Rates on bar iron, in carloads, from Fort Wayne, Ind., to certain points in Indiana, Illinois, Wisconsin, and Missouri found not unreasonable. Complaint dismissed.

R. B. Coapstick for complainant.

John F. Finerty and *D. B. Connell* for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

By Division 4:

Exceptions were filed by complainant to the report proposed by the examiner and the cases were orally argued.

Complainant, a corporation engaged in the manufacture and sale of bar iron at Fort Wayne, Ind., alleges that the rates charged on numerous carloads of bar iron shipped during 1918, 1919, and 1920 from Fort Wayne to points in Indiana, Illinois, Wisconsin, and Missouri were and are unreasonable. We are asked to award reparation. In No. 12425 there is, in addition, a request for the establishment of a reasonable rate for the future from Fort Wayne to Sheboygan, Wis. Rates will be stated in cents per 100 pounds.

The shipments, excluding those to Sheboygan, which will be considered later, consisted of 273 carloads. They moved over the lines of defendants to points in Indiana, Illinois, and Wisconsin and to St. Louis, Mo. The actual distances over the several routes were from 109 miles to 504 miles. The short-line distances are from 109 to 385 miles. Charges were collected generally at the applicable fifth-class rates, ranging from 12 to 24.5 cents. The record indicates that there were overcharges on some shipments and undercharges on others. These should be promptly adjusted.

Prior to October 26, 1914, commodity rates were in effect on bar iron from Fort Wayne to the destinations specified in the complaint, except to Sycamore, Ill. On that date under authority of *The Five*

¹ This report also embraces No. 12427, Same v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.

Per Cent case, 31 I. C. C., 351, these commodity rates as well as the class rates were increased. On December 5, 1917, the commodity rates on bar iron were canceled and the fifth-class rates made applicable as a result of a general revision of rates in central territory. The fifth-class basis was made applicable generally throughout this territory, the main exception being in eastern Ohio and western Pennsylvania, in so-called short-haul territory. The same basis was applied to iron and steel articles as to bar iron.

The situation resulting from this general readjustment in class and commodity rates caused complaint by shippers in Indiana that manufacturers and shippers in Illinois were unduly preferred in that the latter's rates were on a lower basis. The history of the Illinois class rates and their relation to the rates from Indiana is set forth in *Illinois Classification*, 55 I. C. C., 290, 298. In that case, decided November 8, 1919, we stated that shippers in Indiana were shown to be unduly prejudiced by the then existing rate structure. It was recommended among other things that the commodity rates on manufactured iron and steel articles be revised by reverting to the bases in effect prior to October 26, 1914, and adding the equivalent of the 5, 15, and 25 per cent increases, with such modifications as might be required. It was stated, however, that with respect to rates on iron and steel the record was not sufficient to warrant any recommendation.

On February 29, 1920, rates were established on bar iron from Fort Wayne to all but a few of the points of destination specified in the complaint, on the same basis as that recommended by us with respect to rates on manufactured iron and steel articles. To the other points the fifth-class basis remained in effect.

The following table compiled from exhibits of record shows representative points of destination, the short-line mileage, the fifth-class rates on June 25, 1918, and the commodity rates established February 29, 1920. Complainant seeks reparation on the basis of the latter rates.

From Fort Wayne to—	Short-line distance.	Fifth-class rate, June 25, 1918.	Commodity rate, Feb. 29, 1920.
	Miles.	Cents.	Cents.
La Fayette, Ind.....	109	¹ 12	10.5
Burnham, Ill.....	134	17.5	10.5
Chicago, Ill.....	148	17.5	10.5
Sycamore, Ill.....	205	22.5	15
Racine Junction, Wis.....	217	20	² 20
Decatur, Ill.....	229	20	14
Milwaukee, Wis.....	233	20	² 20
Pekin, Ill.....	253	21.5	14
St. Louis, Mo.....	341	24.5	15
Quincy, Ill.....	385	24.5	15

¹ Commodity rate.

² Class rate here stated; the commodity rate to Milwaukee over the New York Central was 14 cents.

Under the rates on June 25, 1918, the earnings based on the actual distances were from 9.7 to 22 mills per ton-mile and from 32.5 to 73.8 cents per car-mile, based on an average loading of 67,100 pounds per car. Under the rates which resulted or would have resulted by applying to bar iron the basis recommended on manufactured iron and steel articles, the earnings would have been from 5.9 to 19.3 mills per ton-mile and from 19.7 to 64.7 cents per car-mile. Using short-line distances the earnings under the rates effective June 25, 1918, ranged from 12.7 to 22 mills per ton-mile and 42.6 to 73.8 cents per car-mile. The earnings on shipments made prior to the 25 per cent increase in rates on June 25, 1918, were lower.

Complainant compares the fifth-class rates in effect on June 25, 1918, from Fort Wayne to the several points of destination with the fifth-class rates contemporaneously in effect on bar iron from Pittsburgh, Pa., to the same destinations. The short-line distances from Pittsburgh are shown to be from 418 to 702 miles. The fifth-class rates ranged from 25.5 to 34 cents as compared with rates of 12 to 24.5 cents from Fort Wayne for short-line distances from 109 to 385 miles. Distance considered, these rates do not seem out of line.

Similar comparison is made with commodity rates on bar iron from Chicago to the several destinations for distances ranging from 27 to 284 miles. These rates were from 4 to 12 cents. They did not include the increase of 5 per cent made in 1914 in rates east of the Mississippi River nor other increases, as pointed out in the *Illinois Classification case, supra*.

It was shown also that low commodity rates were contemporaneously in effect on bar iron in "short-haul" territory from Pittsburgh, McKee's Rock, and Sharon, Pa., and Steubenville, Lorain, Cleveland, and Youngstown, Ohio, to numerous points in Pennsylvania, West Virginia, and Ohio. These rates were from 4 to 14 cents for distances of from 3 to 154 miles. The maximum distance in western Pennsylvania and eastern Ohio for which rates are shown is 154 miles. The exhibits indicate that the rates were not constructed upon any uniform scheme. The rate from Sharon to named points in Ohio was 7.5 cents for distances from 70 to 154 miles, and from Pittsburgh to points in Ohio, Pennsylvania, and West Virginia, 7.5 cents for distances of 63 to 85 miles, whereas from Steubenville to points in Ohio and Pennsylvania for distances from 70 to 154 miles the rates range from 7.5 to 14 cents. The rate for a haul of 91 miles from Steubenville to Canton, Ohio, was 10 cents, for the same distance to Cambridge, Ohio, 7.5 cents, for a haul of 103 miles to Jamestown, Pa., 11.5 cents, and for 150 miles to Parkersburg, W. Va., 10 cents. Numerous similar illustrations could be taken from the exhibits.

Complainant cites *Steel & Tube Co. v. Director General*, 61 I. C. C., 526, where we held the fifth-class rate of 14 cents applied on steel car-plates, in carloads, from Indiana Harbor, Ind., to Michigan City, Ind., 33 miles, during Federal control after June 25, 1918, unreasonable to the extent that it exceeded a commodity rate of 6 cents subsequently established. But there the rate assailed yielded 85 mills, and the rate found reasonable 36 mills, per ton-mile.

Defendants contend that the fifth-class basis on bar iron from Fort Wayne was not unreasonable. The same basis applied to the same points of destination, not only from Fort Wayne but from Pittsburgh, Terre Haute, Vincennes, New Albany, and Evansville, Ind., and Middletown, Youngstown, and Cleveland, Ohio. The fifth-class rates from these points to the several points of destination are not out of line, distance considered, with those contemporaneously in effect from Fort Wayne to the same points.

The shipments to Sheboygan consisted of four cars which moved between March 3 and November 1, 1918. The distance is 285 miles over the short line. The applicable fifth-class rate of 21 cents was charged up to June 25, 1918, and 26.5 cents thereafter. Complainant seeks reparation on the basis of a rate of 16 cents to June 25, 1918, and 20 cents thereafter.

Prior to October 26, 1914, a commodity rate of 15.5 cents applied on bar iron from Fort Wayne to Sheboygan, increased to 16.3 cents on October 26, 1914, following *The Five Per Cent case, supra*, and to 21 cents on September 25, 1917, following the *C. F. A. Class Scale case*, 45 I. C. C., 254, and the *Fifteen Per Cent case*, 45 I. C. C., 303. It was subsequently increased under General Order No. 28 of the Director General of Railroads and the general increases of 1920. The present rate is a commodity rate of 36.5 cents, composed of a rate of 19.5 cents to Milwaukee, Wis., and 17 cents beyond. This rate is 1 cent less than the fifth-class rate from Fort Wayne to Sheboygan. Complainant requests the establishment of a rate of 26.5 cents for the future.

Numerous comparisons of the same general character as those heretofore considered were introduced. The earnings under the rate of 21 cents were 14.7 mills per ton-mile and 49.3 cents per car-mile based upon a loading of 67,100 pounds.

The rates contemporaneously in effect from Fort Wayne to Milwaukee for a distance of 233 miles by the short line were 16 cents prior to June 25, 1918, and 20 cents thereafter. Milwaukee is 52 miles less distant than Sheboygan from Fort Wayne. The difference in the rates from Fort Wayne to Sheboygan, on the one hand, and Milwaukee, on the other, was 5 cents, then 6.5 cents, and finally 17

cents, due mainly to the successive percentage increases in the rates and the establishment of a lower commodity rate to Milwaukee.

We find that the rates assailed were not and are not unreasonable. The complaints will be dismissed.

No. 12407.¹

LOGOOTEER FIRE CLAY PRODUCTS COMPANY
v.
DIRECTOR GENERAL, AS AGENT, AND BALTIMORE &
OHIO RAILROAD COMPANY.

Submitted January 20, 1922. Decided April 10, 1922.

Rates on bituminous coal in carloads from Wheatland to Vincennes, Ind., and from Montgomery and Cannellburg to Logoootee, Ind., during Federal control found unreasonable. Reparation awarded.

R. B. Coapstick for complainants.

John F. Finerty, Fred W. Heid, and Herbert S. Harr for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

By Division 4:

Exceptions were filed by complainants and defendants to the proposed report and oral argument was had. Our conclusion differs from that recommended by the examiner.

The complainant in No. 12407 is the Logoootee Fire Clay Products Company, a corporation engaged in manufacturing fire brick and other clay products at Logoootee, Ind. The complainants in No. 12408 are Fred Kixmiller and Fred S. Kixmiller, copartners dealing in coal at Vincennes, Ind., under the trade name of F. Kixmiller & Son. Complainants allege that the rate of 70 cents per net ton charged on bituminous coal, in carloads, from Wheatland, Ind., to Vincennes, and from Montgomery and Cannellburg, Ind., to Logoootee, between October 20, 1918, and May 25, 1920, was unjust and unreasonable to the extent that it exceeded 45 cents. We are asked to award reparation. Rates are stated in amounts per net ton.

¹ This report also embraces No. 12408, Fred Kixmiller et al. v. Same.
68 I. C. C.

The movements were intrastate and except under circumstances not here present our jurisdiction is limited to the period of Federal control. The shipments which moved during that period only will therefore be considered.

The points of origin and destination are on the Baltimore & Ohio in what is known as the Princeton group which extends from Vincennes to Shoals, Ind., 41.5 miles. Wheatland is 11.8 miles east of Vincennes. Cannellburg and Montgomery are 4.5 and 7 miles, respectively, west of Loogootee.

Fifteen carloads moved over the Baltimore & Ohio from Wheatland to Vincennes, where they were delivered by the Pittsburgh, Cincinnati, Chicago & St. Louis. The shipments to Loogootee from Cannellburg, 41 carloads, and from Montgomery, 55 carloads, originated on and were delivered by the Baltimore & Ohio. Charges were collected on all of the shipments at the applicable commodity rate of 70 cents which was a group rate applying between points within the group irrespective of distance.

Prior to April 1, 1917, the rates in the Princeton group for distances of less than 30 miles ranged from 20 to 30 cents. In 1917 the rates were increased to 35 cents and then to 45 cents. On June 25, 1918, the rate was made 70 cents under General Order No. 28 of the Director General of Railroads. Following a hearing before the Public Service Commission of Indiana, that commission on September 17, 1920, prescribed a rate of \$10 per car on coal for a switching movement not involving a road haul, a rate of 55 cents per net ton for distances of 10 miles and less involving a road haul, and a rate of 65 cents for distances from 10 and under 30 miles with the exception of certain mines in the Bicknell, Ind., field. Complainant contends that it is unreasonable to apply a group rate to short hauls within the group.

Various comparisons of rates were introduced by both complainants and defendants. No evidence was offered as to the volume of movement under these rates or as to other facts and circumstances affecting them. It appears that most if not all of them were group rates.

The earnings under the 70-cent rate charged for the distances of 4.5, 7, and 11.8 miles were 15.5, 10, and 5.93 cents per ton-mile respectively and \$7.15, \$4.60, and \$2.73 per car-mile for an average loading of 46 tons per car. Based on this loading the earnings per car were \$32.20.

In *Utilities Development Corp. v. P., O., C. & St. L. R. R. Co.*, 56 I. C. C., 694, we held that a rate of 70 cents on run-of-mine bituminous coal, in carloads, from Bicknell to Edwardsport, Ind., 4.4 miles, was unreasonable to the extent it exceeded 40 cents. This

was a group rate and applied within the group for distances of from 2 miles to 45 miles. In that case we pointed to the impropriety of the group adjustment with such varying disparities in distances.

In a recent case, *Clinton Paving Brick Co. v. Director General*, 66 I. C. C., 388, we found that the rates charged on bituminous coal, in carloads, from and to points in Indiana during this period were unreasonable to the extent that they exceeded 45 cents for hauls of less than 10 miles and 60 cents for a haul of 11.6 miles.

We find that the rates assailed were unreasonable to the extent that they exceeded 45 cents per net ton from Cannellburg and Montgomery to Loogootee and 60 cents per net ton from Wheatland to Vincennes; that complainants made the shipments as described, and paid and bore the charges thereon; that they have been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice.

68 I. C. C.

No. 12210.

AMERICAN FRUIT & VEGETABLE SHIPPERS
ASSOCIATION ET AL.

v.

BANGOR & AROOSTOOK RAILROAD COMPANY ET AL.

Submitted January 23, 1922. Decided April 10, 1922.

Heater transit charges on potatoes, in carloads, shipped in Eastman cars from Aroostook County, Me., to Boston, Mass., New York, N. Y., Philadelphia, Pa., and certain group destinations, found not unreasonable. Complaint dismissed.

C. R. Marshall and Chas. E. Bell for complainants.

Charles H. Blatchford for Maine Central Railroad Company; *G. H. Eaton* for Boston & Maine Railroad; *Henry J. Hart* for Bangor & Aroostook Railroad Company; *George Wood* and *H. E. MacDonell* for Canadian Pacific Railway Company; and *A. T. Weldon* for Canadian National Railways.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

MEYER, *Commissioner*:

Exceptions were filed by complainant to the report proposed by the examiner, and the case has been orally argued before us.

Complainants are the American Fruit & Vegetable Shippers' Association, the Aroostook Federation of Farmers, and individual growers and shippers of potatoes in and from Aroostook County in the State of Maine. By complaint filed February 8, 1921, they alleged that the heater transit rates charged by defendants on numerous carloads of potatoes shipped in Eastman heater cars since October 8, 1920, from points in Aroostook County to certain group destinations, principally Boston, Mass., New York, N. Y., Philadelphia, Pa., and intermediate points, were unjust and unreasonable to the extent that they exceeded the heater transit rates in effect immediately prior to October 8, 1920. The commission is asked to prescribe just and reasonable rates for the future and to award reparation. Rates will be stated in cents per 100 pounds.

The potato-producing section of Maine comprises principally Aroostook County and that immediate vicinity, and most of the traffic originates on the Bangor & Aroostook Railroad. Eastman heater

cars are operated by the Eastman Car Company, hereinafter called the Eastman Company, and are used only in shipments from Maine producing territory. They are especially designed for protection against cold and contain permanently installed heaters as a part of the car equipment. From a heater the warm air flows upward through the walls of the car and then circulates through the body of the car. The heat is automatically regulated by the use of a thermostat governor. Kerosene oil is used for fuel, and the heating devices are covered by unexpired patents owned by the Eastman Company. The capacity of one tank and burner is 55 gallons, which will heat a car for from four to eight days—four days in the coldest weather and from seven to eight days in normal temperatures.

The average time of movement to Boston is about four days and to New York seven to nine days. The Eastman heater cars have been in service from 28 to 30 years. The later-built cars are of practically the same type but of larger capacity. During the shipping season of 1920-21 there were in service 1,620 of these cars, 90 of which were owned by the Eastman Company, 380 by the Canadian Pacific Railway, 200 by the Canadian National Railways, and 950 by the Maine Central. The Eastman Company furnishes fuel and inspection service in connection with all cars, and furnishes filling and refilling stations and attendants who look after the equipment during the time it is in transit. This service is performed under contracts by which the Eastman Company receives 75 per cent and the carriers 25 per cent of all heater transit and detention charges on cars owned by the carriers. For the use of the cars owned by the Eastman Company the carriers pay mileage and turn over the full 100 per cent of the heater car charges to the Eastman Company. The Eastman Company assumes all liability for damage resulting from improper heating of the car.

The destination territory as defined in the tariffs at the present time may be briefly described as follows:

Group 1: All stations in Maine.

Group 2: Stations in New Hampshire, Vermont, Massachusetts, Rhode Island.

Group 3: Stations on lines of concurring carriers in Connecticut and New York, New York state destination points being restricted to

(a) Points on the New York Central Railroad south of Troy, Albany, and Chatham to and including 88rd St. Station—60th St. Station, 180th St. Station and Melrose Junction, N. Y.;

(b) Points on N. Y., N. H. & H. R. R., between Port Chester, N. Y., Woodlawn, N. Y., and Harlem River, N. Y., inclusive.

(c) Points on Boston & Albany and Boston & Maine railroads.

Group 4:

(a) Points on Long Island.

(b) Points in the state of New Jersey.

(c) Philadelphia, Pa., and intermediate points on the P. R. R. and P. & R. Ry.

- (d) New York City Pler stations of N. Y., N. H. & H. R. R., south of Harlem River and on N. Y. C. R. R., south of 83rd St. Station.
- (e) Brooklyn, N. Y., stations.
- (f) Points within New York lighterage limits.

Heater transit charges for the use of Eastman heater cars are published by the carriers as a separate charge in addition to the line-haul rate. They were formerly named in amounts per bushel on potatoes. In the fall of 1912 the carriers changed the basis of these rates to cents per 100 pounds, which resulted in an increase of substantially 0.5 cent to Boston and slightly more than 0.5 cent per bushel to New York. The proposed tariffs were suspended, but were allowed to take effect upon a finding of reasonableness in *Potatoes in Heater Cars*, 25 I. C. C., 159. The rates there approved were 4, 5, 6, and 7 cents per 100 pounds to Groups 1, 2, 3, and 4, respectively. Since that decision there have been two increases in heater transit rates. The first was made by the director general on December 27, 1918, the increases being 1 cent per 100 pounds to Group 1 points and 2 cents per 100 pounds to Group 2, 3, and 4 points of destination. The second increase was made between October 8 and November 8, 1920, and was 2 cents to Group 1, 3 cents to Group 2 and 3, and 3.5 cents to Group 4 points of destination. The average percentage of increase to all groups was 31.6 per cent on December 27, 1918, and 39.8 per cent in October and November, 1920. The average percentage of the aggregate of the last two increases to all groups was 84.2 per cent. Rates to points in Group 1 are intrastate, and considering increases in interstate rates only the average percentage of increase was 87.3 per cent.

The present rates are effective only during the winter season beginning November 1 and ending April 7. The carload minimum weights were increased on November 21, 1918, from 30,000 to 35,000 pounds on the small-capacity Eastman cars, and from 36,000 to 45,000 pounds on the large-capacity Eastman cars. Complainants do not attack the carload minimum weights. The present rates and minimum-carload charges for the heater transit service, for Eastman cars, to the various groups, based upon the minimum weights, are as follows:

	Rate.	Minimum charge.	
		16-ton series.	30-ton series.
Group 1.....	Cents. 7	\$24.50	\$31.50
Group 2.....	10	35.00	45.00
Group 3.....	11	38.50	49.50
Group 4.....	12.5	43.75	56.25

In addition to the Eastman heater cars, there are two other types of cars used for the protection of potato shipments in transit from Maine during cold weather, namely, the refrigerator car and the lined box car. The refrigerator car is adapted to this use by sealing and stripping the doors with paper. A stove is placed in the car and the car is thoroughly warmed before and during the process of loading. When the loading is completed the stoves are usually taken out and the doors quickly closed and sealed or stripped. A refrigerator car thus prepared will retain a considerable degree of heat for three or four days. In extreme weather a portable heater is sent with the car and a caretaker in charge. The fuel most commonly used by the shippers is wood. A charge of \$5 per car per trip is made for the use of a refrigerator car. This type of car is preferred by many shippers, but the record indicates that the demand for refrigerator cars during the winter season in this territory is often greater than the supply. The other type of car used for potato shipments in cold weather is the ordinary box car, which is lined by the shipper with lumber and paper and a stove installed. These cars are assigned to the shipper at the opening of the shipping season and continue for all practical purposes to be his private cars during the shipping season. One caretaker is allowed to have charge of not more than five cars. This type of car is used principally by the larger shippers or by combinations of smaller shippers. It is preferred by many shippers over the Eastman car because of its lower cost and the reasonable certainty of car supply. The Canadian Pacific has 370 box cars with permanent linings made especially to withstand cold, which it furnishes to shippers at a charge ranging from \$3 to \$16 per car per trip. The charges for the use of such cars in territory here considered ranges from \$5.50 to \$8.50 per car. In all cars except Eastman heater cars the shippers place their own stoves, provide fuel, furnish their own caretaker, and assume all the risk of improper heating of the car. For this reason the Eastman cars are more satisfactory to small shippers, as the providing of a caretaker for one or two cars makes the charges per car higher.

A statement showing the different kinds of equipment delivered by the Bangor & Aroostook to its connections loaded with potatoes each shipping season since 1912-13 indicates that 37.9 per cent of the shipments are made in ordinary box cars, 44.9 per cent in lined box cars, 5 per cent in refrigerator cars, and 12 per cent in Eastman heater cars.

Complainant introduced various exhibits showing rates for protective service against cold applicable to shipments of potatoes from Wisconsin, Minnesota, and Washington. There is a movement of potatoes from Wisconsin and Minnesota, but the principal move-

ment under heater service from Washington consists of apples. From points in Minnesota on the Chicago, Rock Island & Pacific and other lines heater service was maintained for many years without any additional charge, the heat being furnished by portable heaters placed in the bunkers of refrigerator cars. In 1914 separate charges were established from points in western trunk-line territory ranging from 4 to 7 cents per 100 pounds. The charges applied locally in North Dakota, Iowa, Illinois, and South Dakota and between points in Illinois, Iowa, Missouri, Minnesota, North Dakota, South Dakota, Wisconsin, and Nebraska. The territory of application was later expanded to cover traffic to certain points in eastern Colorado, also to and from the Upper Peninsula of Michigan and to and from points in Indiana within the switching limits of Chicago, Ill. Certain transcontinental rates for protective service against cold were also established in 1914 from points in Oregon, Washington, northern Idaho, and Montana. The tariffs applying from the North Pacific coast and western trunk-line territories do not provide for heater service east of the Illinois-Indiana State line. These charges when established were not based on cost figures, but it appears that the then existing rates for heater service in Maine were used as a guide.

In 1919, the Director General of Railroads instituted a proceeding asking for advice concerning his proposed perishable protective freight tariff No. 1 designed to contain in one volume all the rules, regulations, and charges applicable to the protection of perishable freight from heat or cold on all lines under Federal control, except the New England lines serving the Maine territory. It was proposed in that tariff to publish all heater charges in amounts per car. The charges proposed were materially higher than those then in effect. Data relating to the cost of the service were submitted to show that the increased charges were reasonable, but proved to be of little or no value. Accordingly, the commission was unable to find the proposed charges reasonable, and suggested that the charges then in effect be maintained until, through revised accounting methods and special studies made of the subject, the carriers were able to present more satisfactory evidence. The tariff as filed with this commission, effective February 28, 1920, known as perishable freight tariff No. 1, Agent Fairbanks's I. C. C. No. 6, provides for rates in cents per 100 pounds, ranging from 4 to 9 cents, subject to minimum charges ranging from \$12 to \$27, based upon a minimum weight, generally speaking, of 30,000 pounds.

The character of the service from western trunk-line and northwest territories may be described as optional. When a shipper orders a car he must specify whether he desires his shipment to move under shippers' protective service or carriers' protective service. Under

shippers' protective service either a refrigerator or an ordinary box car may be furnished. If a refrigerator car is furnished, there is a charge of \$5 per car per trip. The shipper prepares the car by lining or stripping and attends to the heating at his own expense, and the carrier assumes no liability for loss or damage from freezing, overheating, or fire, except that imposed by law for its own negligence. Under carriers' protective service the carrier furnishes a refrigerator car with a stove, attends to the heating, and assumes all risks from improper heating. There is no special type of heater car, other than refrigerator car, in use in this territory.

A comparison of the present heater transit rates and minimum-car-load charges for the use of Eastman heater cars from Presque Isle, Me., to Boston, New York, and Philadelphia, with carriers' protective-service rates and minimum charges for like distances in western territory, are shown below :

From—	To—	Distance.	Rates.	Minimum charge per car.
		Miles.	Cents.	
Presque Isle, Me.....	Boston, Mass.....	421	10	{ 1 \$35.00 2 45.00 15.00 15.00 12.00
Princeton, Minn.....	Council Bluffs, Iowa.....	427	5	
Rhineland, Wis.....	Champaign, Ill.....	442	5	
Yakima, Wash.....	Eugene, Oreg.....	434	4	
Presque Isle, Me.....	New York, N. Y.....	644	11	{ 1 38.50 2 49.50 18.00 18.00 15.00
Princeton, Minn.....	St. Louis, Mo.....	655	6	
Rhineland, Wis.....	Fremont, Nebr.....	637	6	
Yakima, Wash.....	Pocatello, Idaho.....	648	5	
Presque Isle, Me.....	Philadelphia, Pa.....	736	12.5	{ 1 43.75 2 55.25 18.00 18.00 24.00
Princeton, Minn.....	Lamar, Mo.....	747	6	
Rhineland, Wis.....	St. Joseph, Mo.....	743	6	
Yakima, Wash.....	St. Paul, Minn.....	1,741	8	

1 Eastman cars, series 30,000. 2 Other Eastman cars.

While in many respects these rates are not fairly comparable, the same liability for loss and damage is assumed by the carriers in each instance.

The records of the United States Weather Bureau indicate that the normal annual temperature of northern Minnesota and Wisconsin and the Upper Peninsula of Michigan is between 35° and 40° F. A statement prepared from the annual reports of the Department of Agriculture shows the mean temperatures in December, January, and February of the potato-producing sections of Maine, Minnesota, Wisconsin, and Michigan, covering the period 1915 to 1920, inclusive; and shows that the mean temperature of the Maine section is slightly higher than the mean temperature of the Minnesota section, slightly lower than that of the Wisconsin section, and lower by 9° to 14° than that of the Michigan section.

Defendants have sought to justify the increased charges here attacked by evidence bearing upon the cost of rendering the special service furnished by the Eastman heater cars as distinguished from the ordinary service of transportation. The income account of the Eastman Company for the seasons 1915-16 to 1920-21, inclusive, shows operating deficits beginning with the season of 1917-18 of \$10,653.07, and amounting to \$78,189.19 for the season of 1919-20. In spite of the increased rates, the season of 1920-21 up to March 1, 1921, shows a deficit of \$6,810.96. The total operating income for this season was less than one-half that of the season of 1919-20. The foregoing figures make no allowance whatever for depreciation on the cars owned or upon the investment in repair shops and in storage tanks and pipe lines for the distribution of oil. The records of the Bangor & Aroostook Railroad show that only about 50 per cent of the number of bushels of potatoes originated on its line during the season of 1920-21 up to March 1, 1921, as compared with the season of 1919-20. Mild temperatures also prevailed during the last shipping season.

The expenditures for "oil" and "damage claims" constitute approximately 50 per cent of the operating expenses. The amount paid for loss and damage claims increased substantially during the years 1918, 1919, and 1920, due in part to the high prices of potatoes which prevailed and in part to other causes. Oil, used for fuel, is purchased of the Standard Oil Company and Gulf Refining Company f. o. b. Beverly, Mass., or Portland, Me. Purchases are usually made in tank-car lots and the purchase price is increased by the cost of transportation to the point of location of storage tanks maintained by the Eastman Company at various filling and refilling stations. The expenditures for oil, which the Eastman Company uses in great quantities, are shown to have been made at prices prevailing at the various times of purchase.

It is the contention of complainants that the heater transit charge here in issue is intended to cover only the cost of keeping the car properly heated during the course of transportation, but that the cost of fuel used in necessary heating prior to loading and during detention at destination after the expiration of free time is included as a part of the transportation expense. For the latter service a special charge of \$2 per day is made. The revenue, however, received from the detention charge as well as that from the heater transit charge is included in the analysis of defendants, together with the corresponding items of expense for the total consumption of oil for both services.

From the season of 1915-16 to the season of 1919-20 all operating expenses except car repairs were substantially increased. The expla-

nation of a decrease in the item of car repairs lies in the fact that in the season of 1915-16 the Eastman Company owned 400 cars and in 1919-20 only 120 cars. The total operating income for these two seasons was approximately the same, viz, \$160,344.62 for 1915-16 and \$166,127.20 for 1919-20. The cost of oil increased more than 100 per cent; the amount paid for loss and damage claims more than 400 per cent; the item of "operation of cars," which includes the cost of labor of inspectors and caretakers, more than 300 per cent; and the total operating expenses increased from \$116,434.37 to \$244,316.39, or more than 100 per cent. The average cost of labor is \$6 per day, which is less than the scale for similar labor performed by the employees of the carriers.

The cost of an Eastman heater car when the cars now in use were constructed was estimated to have been at from \$400 to \$500 in excess of the cost of an ordinary box car. The excess now would be about \$800. The cost of maintenance of heater equipment of 950 Eastman cars owned by the Maine Central for the season of 1920-21 was \$36.35 per car. The cost of repairing the doors and heater equipment of 380 Eastman cars belonging to the Canadian Pacific for the season of 1920-21 was \$31.27 per car. The Canadian Pacific received as its 25 per cent share of heating charges for this season approximately \$30 per car. The season of 1920-21 was not, however, a normal season, and, as these cars are used to some extent for general traffic, all repairs are not properly chargeable to the heater service. For the season of 1919-20 the Maine Central received as its 25 per cent share of the heater charges \$33,756. It had 960 cars in operation, which was an average revenue per car of \$35.16.

The carriers contend that the 25 per cent of the revenue from heater transit service which is paid to them where the Eastman cars are owned by the carriers does not more than compensate them for the added investment and for the special services which are required to be performed by them in connection with this traffic. The record shows that the use of Eastman cars is greatest when operating conditions are most difficult, when the tracks must be cleared of snow and the tonnage of freight trains reduced; that extra switching is required to fill and refill the oil tanks; that the Eastman car weighs more than the ordinary car; that carriers' agents and employees are often called upon to adjust the heating apparatus; and that the use of the car is limited, in that during the winter shipping season it must be used exclusively for potato traffic, and during the summer season it should not be allowed to be sent too far from the home road and should not be loaded with the rougher grades of freight. There is a limited heater-car service in Eastman cars northbound from Boston to Portland and Bangor, Me. The number of Eastman cars which return loaded is not shown.

The cost of shipping in lined box cars and refrigerator cars as compared with the minimum charges for the use of Eastman cars was the subject of some testimony. The cost of lining a box car is estimated at from \$115 to \$125 per car. The number of trips per season varies from five to nine trips according to one witness, but this seems to be a liberal estimate in view of the fact that Eastman cars make only three or four trips a season. The cost of fuel varies with the time of year and the distance and is estimated at from \$4 to \$5 to Boston and from \$8 to \$10 to New York. The cost of a caretaker is from \$25 to \$75, including his return fare of 1 cent a mile, which is divided between five cars. The expense of a caretaker to Boston is estimated at from \$35 to \$40. No estimate was made of the cost of the stoves used or the length of time they may be used. Taking five trips as a basis, the cost of shipping to Boston would be from \$33 to \$38 per car. The present charge for an Eastman car, minimum 45,000 pounds, to Boston is \$45. This shows a difference of from \$7 to \$12 per car in favor of the lined box car, but in using the lined box car the shipper assumes all risk from freezing, overheating, or fire. The cost of supplying heat and a caretaker to all destinations, using a permanently lined box car owned by the Canadian Pacific, including \$5.50 for the use of the car, is estimated by one witness at \$25 per car per trip. The cost of lining a refrigerator car is between \$25 and \$30, and assuming the cost of fuel and a caretaker to be the same as with the lined box car, and including \$5 for the use of the car, the cost per car per trip to Boston would be between \$21 and \$24.

There is a substantial disparity between the heater transit rates here assailed and the heater transit rates maintained by carriers in western trunk-line and northwestern territory. But traffic and transportation conditions are shown to be dissimilar. The competitive conditions in the two territories are not the same. There is a demand for cars used in potato traffic in the western territory throughout the year, while in New England the demand is seasonal. Moreover, the value of the service of the Eastman car is greater than the service performed by the carriers' protective heater service in the West. The record shows that since the year 1917 Eastman heater cars have been operated at a loss. During the season of 1920-21, when the increased rates here assailed were exacted, the Eastman heater cars did not earn a sufficient amount to allow for interest upon the investment. It can not be said upon this record that the rates assailed are unreasonable for the service performed. We are of opinion and find that the rates assailed were not and are not unreasonable. The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 1481.

BRICK, CLAY, AND CLAY PRODUCTS FROM DANVILLE,
ILL., TO EAST ST. LOUIS, ILL.

Submitted February 6, 1922. Decided April 20, 1922.

Proposed reduction in interstate rates on brick, and articles taking the same rates, in carloads, from Danville, Ill., to East St. Louis, Ill., found not justified. Suspended schedule ordered canceled and proceeding discontinued.

K. L. Richmond for respondents.

R. B. Coapstick for Indiana State Chamber of Commerce and Indiana Brick Manufacturers' Association.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

McCHORD, *Chairman*:

By schedule filed to become effective February 1, 1922, the Chicago & Eastern Illinois Railway, hereinafter called the respondent, proposed to reduce its rates on brick, and articles taking the same rates, in carloads, from Danville, Ill., to East St. Louis, and Madison, Ill. Upon protest by the Indiana State Chamber of Commerce, the operation of the proposed schedule as applied to East St. Louis was suspended until June 1, 1922. Rates will be stated in amounts per net ton.

Danville is located in the so-called Wabash Valley group, which extends from Danville, Ill., and Attica, Ind., on the north, to Terre Haute, Ind., on the south, a distance of about 55 miles. It includes 26 plants manufacturing brick and other clay products, which are served by a number of carriers, including the respondent, the Wabash, the Pennsylvania, the Cleveland, Cincinnati, Chicago & St. Louis, the Chicago, Milwaukee & St. Paul, the Toledo, St. Louis & Western, and the Cincinnati, Indianapolis & Western. The clay or shale from which their products are manufactured is in the same geological strata. The producing points in this group have common markets.

The East St. Louis switching district includes the three cities of Madison, Venice, and Granite City, Ill. The respondent's present rate on brick from Danville to East St. Louis is \$2.10 while the rate to Granite City and Venice is \$1.96. On August 26, 1920, the rate on brick from Danville to East St. Louis, Granite City, and Madison

over the Wabash was \$2.10, but on September 22, 1921, it was reduced to \$1.96. Respondent states that the purpose of the proposed reduction is to place East St. Louis and Madison on the same basis as Granite City and to meet the rates in effect over the Wabash.

The present rate to St. Louis, Mo., via both the Chicago & Eastern Illinois and Wabash is \$2.10. The distance from Danville to East St. Louis over the respondent's line is 188 miles and via the Wabash, 184 miles. The distance to Granite City is the same over both lines, namely, 179 miles. The present rate from Terre Haute to East St. Louis is \$2.24 for a distance of 166 miles. The present intrastate rate on hollow building tile from Danville to East St. Louis is \$1.82, while from Indiana points in the Wabash Valley group, hollow building tile takes the same rate as brick. The spread between the rate to East St. Louis on hollow building tile from Danville and from Terre Haute is 42 cents, which is stated to be more than a normal profit on the business.

Following the general readjustment of brick rates in 1911, the rates from Danville and other points in the Wabash Valley group to East St. Louis were the same. The lower rate from Danville has resulted from the failure of the carriers in Illinois to obtain the benefit of certain increases authorized by us in the interstate rates. The movement from Danville to East St. Louis, Granite City, Madison, and Venice over the lines of both the respondent and the Wabash is wholly intrastate. The suspended rate would therefore apply only as a part of a combination rate to some point beyond East St. Louis.

Protestant objects specifically to the proposed reduction in the rate from Danville to East St. Louis unless corresponding reductions are made from points in the Wabash Valley group, and contends that such reduction would still further increase the prejudice which now exists against these points. Protestant states that it was not aware of the reduction of the rate from Danville to East St. Louis over the Wabash.

In *Brick from Danville*, 64 I. C. C., 624, the respondents proposed to reduce the rates on brick, and articles taking the same rates, from Danville to Gary and Hammond and certain other points in Indiana taking Chicago, Ill., rates, from \$1.82 to \$1.96, respectively, to \$1.68. Following the so-called 1911 brick-rate adjustment, Danville and Attica took the same rates to Chicago. The reduction was proposed in order that the Wabash, which forms a distinctly circuitous route from Danville to these destinations, might compete for traffic at the rate of \$1.68, in effect over the direct lines of the Chicago & Eastern Illinois and New York Central. The rate contemporaneously in effect to Chicago from Attica, which is served by both the Chicago & Eastern Illinois and Wabash, was \$1.96. We found that the pro-

posed reduction, pending general readjustment, had not been justified. The present rate on brick from Attica to East St. Louis via the line of the respondent or of the Wabash is \$2.24. There is no material distinction between the instant case and *Brick from Danville, supra*. In *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 68 I. C. C., 213, we said, at page 242:

The Wabash Valley group is geologically, commercially, and competitively one group with respect to the rates on brick, mining the same vein of coal and using the shale underlying this coal at both extremes of the group, Danville and Terre Haute. Under such circumstances the failure to treat it as a single group on long-haul traffic under the group adjustment of rates, while recognizing the propriety of treating it as a single group on traffic to the East and to the gateway through which the traffic moves to the West, is clearly illogical. * * *

We find that * * * the failure of defendants to treat the Wabash Valley group as one group in all directions on long-haul traffic is, and for the future will be, unjust and unreasonable.

We find that the suspended schedule has not been justified. An order will be entered requiring its cancellation and discontinuing this proceeding. This finding is without prejudice to the filing of schedules of reduced rates from points in the Wabash Valley group to East St. Louis and related points in accordance with the findings in *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., supra*.

68 I. C. C.

No. 11512.

BRUNDRED BROTHERS

v.

PRAIRIE PIPE LINE COMPANY ET AL.

Submitted November 21, 1921. Decided April 15, 1922.

1. Rates for transportation of crude oil by pipe line from wells in Kansas, Oklahoma, and Texas to Franklin and Lacy Station, Pa., found reasonable.
2. Rule requiring shipments to be tendered in quantities of not less than 100,000 barrels found unreasonable to the extent that it requires tenders in excess of 10,000 barrels.

Carmalt, Hagerty & Wheeler for complainants; and *A. G. Hagerty* for complainants and interveners.

T. J. Flannelly and *Frank Lyon* for Prairie Pipe Line Company; *H. D. Bushnell* and *Edgar E. Clark* for Indiana Pipe Line Company, Buckeye Pipe Line Company, and Northern Pipe Line Company; and *Frank L. Crawford* for National Transit Company.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

ESCH, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner, to which exceptions were filed by complainants and defendants, and oral argument has been had thereon before us.

Complainants are copartners engaged in producing, purchasing, and selling crude petroleum oil. Defendants are connecting pipe lines operating from the midcontinent and other oil fields to eastern points. Complainants allege that defendants' rates on crude oil from producing wells in Kansas, Oklahoma, and Texas to Franklin and Lacy Station, Pa., and their tariff rule requiring that shipments be tendered in quantities of not less than 100,000 barrels are unreasonable. In the complaint we are asked to reduce the rates by the amount of the so-called gathering charge and the minimum to 2,000 barrels, but in complainants' exceptions it is urged that no minimum is necessary. The Okmulgee District Oil & Gas Association and National Association of Independent Oil Producers intervened to par-

ticipate in the oral argument in support of the complaint. Rates will be stated in cents per barrel of 42 United States gallons.

The pipe-line service is of two parts. The first, known as the gathering service, is performed entirely by the Prairie Pipe Line Company, hereinafter referred to as the Prairie, and consists, as its name implies, of gathering the oil from the producers' tanks at the wells and transporting it by gravity or propulsion to trunk-line stations. It also includes the measuring of the oil, which in turn includes the measuring and strapping of the tanks and computation of their capacity. At the time the complaint was filed the gathering charge was 12 cents, but it was increased, effective September 20, 1920, to 20 cents. The gathering charge is a flat charge for whatever service may be entailed, whether of 1 mile or of 50 or more miles. Oil has been gathered by the Prairie at the flat charge for as great a distance as 90 miles.

In order that the gathering service may be responsive to the needs of the field, frequent extensions of the pipes to new producing properties and withdrawals from exhausted properties must be made. There is, therefore, a more or less constant pipe-shifting process going on in the gathering system. At the time of the hearing there were about 4,200 miles of pipe in the gathering system of the Prairie.

When the oil reaches the trunk-line station the second part of the service begins, namely, the trunk-line transportation to destination. The trunk-line transportation is performed by a series of pumpings, pumping stations being located about every 40 miles along the line. The Prairie carries the oil to Griffith, Ind., where it is delivered to the Indiana Pipe Line, which, with its affiliated lines, the Buckeye Pipe Line and the Northern Pipe Line, complete the carriage to Pennsylvania, where the oil is delivered direct from the pipes of the Northern or through the pipes of the National Transit Company. Franklin is served by both the Northern and the National, but deliveries at that point are usually made through the pipes of the Northern with the National furnishing the pumping service and supervision of deliveries. At Lacy Station, which serves refineries at Warren, Pa., deliveries would be made through the pipes of the National.

The rates in effect when the complaint was filed were the original rates, established since the act declaring pipe lines to be common carriers was held valid in *The Pipe Line cases*, 234 U. S., 548. Subsequent to the filing of the complaint, defendants increased their joint rates from the trunk-line stations to eastern points 25 per cent, effective September 20, 1920, or later. The former and present rates to Franklin and Lacy Station are shown in the following table:

Movement.	Former rates.			Present rates.		
	Trunk line.	Gathering charge.	Aggregate.	Trunk line.	Gathering charge.	Aggregate.
From Redel, Greeley, Humboldt, Argo, and Cobb, Kana., and Bartlesville, Creek, Manuel, Indian, Cherokee, and Captain Creek, Okla.: To Franklin, Pa.....	Cents. 59	Cents. 12	Cents. 71	Cents. 72.75	Cents. 20	Cents. 92.75
To Lacy Station, Pa.....	63.25	12	75.25	79	20	99
From Tiffin, Rogers, and Hensley, Tex.: ¹ To Franklin, Pa.....	89	12	101	111.25	20	131.25

¹ The present rates also apply from Red, Tex., and Temple and Ringling, Okla.

The only evidence offered by complainants to support their contention that the rates are unreasonable is certain statistical data pertaining to the earnings of defendants. The following table shows the ratios of pipe-line operating income to plant investment of defendants for the years 1915 to 1919, inclusive:

	1915	1916	1917	1918	1919
Prairie.....	46.98	41.44	32.89	21.35	20.34
Indiana.....	23.20	23.97	24.09	18.34	16.03
Northern.....	11.10	15.62	16.55	8.85	7.12
Buckeye.....	7.64	10.53	12.25	6.78	7.23
National ¹				6.21	1.98

¹ Returns for the National for 1915, 1916, and 1917 not shown.

The figures for 1917, 1918, and 1919 represent returns after deductions for income and excess-profits taxes aggregating \$4,810,081, \$6,761,214, and \$5,134,278 in each year, respectively. Complainants contend that income and excess-profit taxes should be treated differently with respect to their effect upon income than ordinary property taxes and should not be deducted before operating income is computed, where such income is to be used as a basis for the fixation of reasonable rates. While there is perhaps merit in this contention in so far, at least, as it applies to the excess-profit tax, it will not be necessary for the purposes of this case to decide the question. It is sufficient to say that if the excess-profit or the income taxes or both are excluded the returns for the years 1917, 1918, and 1919 would be considerably larger than the returns shown for those years in the above table. But where, as here, only individual rates are assailed, the fact that in the past defendants' operations have been profitable is not of controlling importance. *Bridgeman-Russell Co. v. G. L. T. Corporation*, 61 I. C. C., 260. It does not appear that there has ever been a shipment of midcontinent crude to Lacy Station. Moreover, the gallonage delivered at Franklin is but a small percentage of the total gallonage transported by defendants.

Defendants have submitted comparisons of the rates attacked with rates of the Prairie and the Sinclair Pipe Line Companies, certain of which are set forth in the following table:

Origin.	Destination.	Pipe line.	Distance.	Present rates.		
				Trunk.	Gather- ing.	Total.
			Miles.	Cents.	Cents.	Cents.
Tiffin, Tex.....	Neodesha, Kans.....	Prairie.....	388.57	62.5	20	82.5
Ranger, Tex.....	Coffeyville, Kans.....	Sinclair.....	(1)	75	15	90
Tiffin, Tex.....	Sugar Creek, Mo.....	Prairie.....	532.03	72.5	20	92.5
Ranger, Tex.....	Kansas City, Kans.....	Sinclair.....	(1)	93	15	108
Bartlesville, Okla.....	Whiting, Ind.....	Prairie.....	630.35	52.5	20	72.5
Neलगony, Okla.....	East Chicago, Ind.....	Sinclair.....	(1)	74	15	89
Tiffin, Tex.....	Whiting, Ind.....	Prairie.....	968.21	90	20	110
Ranger, Tex.....	East Chicago, Ind.....	Sinclair.....	(1)	107	15	122
Captain Creek, Okla.....	Lacy, Pa.....	Prairie.....	1,148.76	70	20	90
Do.....	Franklin, Pa.....	do.....	1,103.52	73.75	20	93.75
Tiffin, Tex.....	do.....	do.....	1,433.26	111.25	20	131.25

¹ Approximately same as next above.

It will be noted from the above table that the joint rates to Lacy Station and Franklin are on a somewhat lower level, distance considered, than the single-line rates of either the Prairie or Sinclair.

Comparison is also made by defendants of the 20-cent gathering charge with the gathering charges in other States, as follows:

Indiana	{ 20 cents. 35 cents.
Ohio	
Illinois.....	35 cents.
Kentucky.....	20 cents.
West Virginia.....	30 cents.
Pennsylvania	30 cents.
	40 cents.

It is not shown, however, that the circumstances surrounding the gathering of oil under the charges set forth above are similar to those surrounding the gathering service in the midcontinent field.

Defendants contend that there is an element of hazard in pipe-line operation that necessitates liberal returns to make investment of capital in the enterprise attractive. A pipe line usually receives its greatest gallonage from any district when first laid, the supply of oil thereafter gradually diminishing until exhausted. This is in contrast with rail transportation, where the tonnage usually increases as time elapses. A pipe line may, at great outlay of money, extend its pipes into a new field that has the brightest prospects only to have the venture prove a disappointing failure. An instance of this was cited in the extension by the Prairie of its line to the so-called Ranger field of Texas.

In support of the increased charges it was testified that not only had general operating costs greatly increased as a result of higher prices for materials and labor, but that the cost of the gathering service had increased materially because the oil formerly stored in large tanks had been practically exhausted, necessitating the gathering of most of the oil at present from small tankage.

Defendants have shown that the increased rates in issue are reasonable as compared with other rates for pipe-line service. If defendants' earnings are excessive such fact might require a general reduction in all of their rates, but we would not be warranted in requiring any reduction in these particular rates below the level of the other rates. We, of course, can not pass upon the reasonableness of all of defendants' rates under the issues and upon the record in this case.

The so-called minimum-tender rule reads as follows:

Orders for the shipment of any specified kind of such crude petroleum shall only become effective when orders from the shipper, in connection with orders from other shippers, for the same kind and quality of crude petroleum shall amount in aggregate to one hundred thousand (100,000) barrels, or more, consigned to the same point of delivery; and subject to this requirement, orders for shipment shall become operative in the order in which they shall have been received.

It (Prairie Pipe Line Company) will forward such crude petroleum when there has been tendered to it by the shipper, individually, or by him and others, a quantity of the same kind and quality of crude petroleum amounting in the aggregate to not less than one hundred thousand (100,000) barrels, all of which shall be consigned for delivery to the same delivery point.

Under this rule the initial line will not accept oil for transportation unless the shipper has 100,000 barrels above ground ready for transportation. But the shipper is not actually required to deliver that amount from one tank or place or at one time. Having 100,000 barrels above ground, he may, after tender, hold it in storage, and defendants will accept the current runs from his wells or his current purchases until the tender is filled. If the shipper desires to continue shipping, he makes further tenders from time to time as the preceding tenders near completion, and defendants will continue to take his oil in small lots as produced or purchased. The identity of shipments of midcontinent oil is not preserved—that is, there is no assurance that the consignee will receive at destination the same oil which comprised the shipment at point of origin.

Based on the prices prevailing at the time of hearing, the present minimum necessitates an investment of about \$450,000 in tanks and oil before shipment can commence; and, if it is desired to have current production or purchases accepted for transportation, approximately that amount of capital must continue to be tied up in reserve storage and oil. This precludes any but the larger operators from

utilizing the pipe-line facilities. At the time of hearing there were but six shippers, two of whom shipped on joint tenders, using the lines of the Prairie. The Prairie Oil & Gas Company, which is controlled by the same interests that control the Prairie, is the largest of these, it having shipped approximately 90 per cent of the oil transported by the Prairie during the five-year period from 1915 to 1919. The charges on 100,000 barrels of oil from Oklahoma to Franklin would be \$93,750 and to Lacy Station \$99,000.

It is permissible under the minimum-tender rule for different shippers to combine their gallonage to meet the minimum. While this would reduce the cost to each shipper, it does not generally constitute a satisfactory way of shipping, as it conditions shipment by any one operator on his ability to find other operators who have the required amount of oil which they are willing to ship to the same point to which he desires to ship.

There is considerable loss from evaporation where oil is held in storage for any great length of time. There is also present in the case of the small operator danger of irreparable loss through falling prices on oil stored to meet the minimum.

Defendants argue that it is necessary to have tenders made in large quantities to insure the Prairie against loss in the extension of its gathering lines to new production. This argument is not convincing. The rule does not require that 100,000 barrels of oil be available at the new producing property before the gathering lines will be extended thereto; neither would the fact that 100,000 barrels are available insure the extension. It is a fair deduction from the testimony offered that the minimum has little to do with the actual determination of whether the gathering lines will be extended into a new district. The determining factor seems to be whether the prospects of production in the new territory are sufficient reasonably to justify the expectation that an extension of the lines will result in profit to the company. After a new district is entered the policy seems to be to connect with all producing wells desiring service, without much regard to the profitableness of each individual connection. If insurance against loss in making new extensions is necessary, it can be secured by means other than the rule under consideration.

Another argument advanced by defendants is that it is impracticable from an operating standpoint to receive tenders of less than 100,000 barrels. When an operator notifies the initial line that he desires to make a shipment his tanks are measured and their connections opened so that the oil may run into the gathering lines. The time necessary to draw 100,000 barrels from small tankage varies with the number and size of the tanks, but ordinarily the

period is sufficiently long so that close supervision of the running is unnecessary for several days. When about 95,000 barrels have been received into the lines, unless a new tender is made in the meantime, all but one of the tanks are shut off and the remainder of the tender is drawn from that or succeeding tanks, care being exercised not to exceed the amount of the tender. It is argued by defendants that, if the tenders are made in less quantities than at present, there will be constant danger that more oil will be run into the pipes than called for by the tender. While a reduction in the minimum will probably necessitate closer surveillance of the receipt of the oil, the contention of defendants that it is impracticable to receive the oil in smaller tenders is not persuasive.

Much has been said with regard to possible contamination of the higher grade oils by the lower grade oils if the minimum is reduced. The pipes of the Prairie are used exclusively for the transportation of midcontinent crude, but the pipes of the other defendants are also used for the transportation of Ohio, Indiana, and Pennsylvania oils. In Indiana and Ohio "sour" or sulphurous oils are produced, which are of lower grade than the midcontinent oil, while the oil produced in Pennsylvania is of higher grade than either the midcontinent or "sour" oils. The amount of "sour" oil transported is comparatively small. Owing to the fact that the oil is not only the commodity transported but also one of the media of transportation, it is not practicable to shut off the line while an entire consignment of one grade of oil is pumped through. When one lot of oil has been received into the pipe line, other oil must be pumped in to force the first lot through. There is always some mixing where one grade of oil abuts another grade, and defendants reason that the smaller the lots transported the more will be the mixing. However, as has already been stated, as an operating matter midcontinent oil is at present received in small lots and delivered as the refiners can use it. Defendants' trunk lines consist of a varying number of parallel pipes which are connected at intervals so as to be operated as a single line, but the eastern lines sometimes handle the different grades of oil through separate pipes. A reduction in the minimum would not seem to necessitate radical changes in the operating practices of the carriers. But if operating changes, or even some changes in the arrangement of the pipes themselves become necessary, that should not deter us, upon a showing that the minimum is unreasonable, from ordering a reduction in the minimum and thereby requiring these defendants to function as common carriers in fact as well as in name.

Opposition to a reduction in the minimum was voiced at the hearing by certain producers in the midcontinent field, certain refiners in

Pennsylvania, and the former general director of the oil division, United States Fuel Administration, now vice president of the Sinclair Consolidated Oil & Refining Company.

The producers who oppose the reduction are not shippers but sell their oil to large operators, including the Prairie Oil & Gas Company. Their opposition is based chiefly on the apprehension that a reduction in the minimum will bring irresponsible brokers into the field, with resultant loss to individual operators and injury to the industry as a whole. It is not one of the common-carrier functions of defendants to protect the unwary from the irresponsible or unscrupulous, and where such protection is afforded through a rule which deprives legitimate shippers of the privilege of using their facilities, the rule can not be sanctioned. Some concern was also manifested by these operators over an expressed possibility that a reduction in the minimum might interfere with the physical operation of defendants' lines and the generally satisfactory service now afforded.

The refiners who opposed the reduction are located at Warren, and their opposition is due to the fear that the shipping of midcontinent crude into Warren through the line of the National Transit Company, which apparently is now used at that point for the transportation of Pennsylvania crude exclusively, will result in contamination of the Pennsylvania oil. There would seem to be no good reason why reasonable operating rules could not be devised which would obviate this difficulty.

The former official of the fuel administration testified that the production of petroleum and petroleum products in the United States is not keeping pace with the demand; that from an economic standpoint the refining of oil should be confined as much as possible to the larger refineries, which are equipped to extract the maximum of usable products from the crude oil; and that from the standpoint of national security it is essential that the larger refineries develop and maintain maximum efficiency, so that they can properly function as a part of the military establishment in time of war, and that this can be done only with an uninterrupted flow of oil.

While we must, in dealing with questions of the character here presented, give careful consideration to the interests of the general public as well as those of the litigating parties, there is nothing of record in this case to justify the conclusion that a reduction of the minimum will react to public detriment.

In Texas a minimum of 500 barrels has been established by the railroad commission of that State for intrastate shipments. No need for a minimum as low as that is shown in connection with the interstate transportation here involved. Some of the eastern pipe lines maintain minima as low as sought by complainant but

under conditions dissimilar to those surrounding the movement of the midcontinent oil. The transportation of oil by pipe line is essentially a bulk business, and that fact must not be lost sight of in determining the issue now under consideration. The pipe lines can not be successfully operated on a dribble basis, and there is a reasonable minimum below which they should not be required to accept oil for transportation. But the minimum must be reasonable, and it is clear that that fixed by defendants does not square with the law in this respect. Rather it reserves the pipe lines to a few large shippers and essentially deprives the lines of the common-carrier status with which they were impressed by the interstate commerce act.

We are practically without precedent upon which to base our determination of a reasonable minimum, and the reasonableness of any minimum can only be verified by actual experience. We believe that a minimum of 10,000 barrels would be sufficiently low to enable complainants, also producers or groups of producers, and refiners or others to utilize the pipe lines, and that it would be sufficiently high to mitigate the operating difficulties mentioned by defendants. Experience will prove whether such a minimum will effectuate the intent of the law that the pipe lines shall be open to the use of all as common carriers, subject only to such reasonable regulations as may be necessary to their efficient operation.

We find that defendants have shown that the increased rates in issue are just and reasonable, but this finding is without prejudice to any conclusion which may be reached upon a broader record as to the reasonableness of defendants' rates generally. We further find that the rule which requires tenders to be made in lots of not less than 100,000 barrels is unreasonable to the extent that it requires tenders in lots of more than 10,000 barrels. If experience should develop that a 10,000-barrel minimum will not effectuate the purposes intended, the parties interested may request our reconsideration of the minimum.

An appropriate order will be entered.

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No. 12572.

STANDARD CHEMICAL MANUFACTURING COMPANY
v.
DIRECTOR GENERAL, AS AGENT, AND CHICAGO &
NORTH WESTERN RAILWAY COMPANY.

Submitted November 25, 1921. Decided April 12, 1922.

Rates on ground wormseed, in bags and barrels, in less than carloads, from Chicago and South Elgin, Ill., to Omaha, Nebr., found unreasonable. Maximum reasonable rates prescribed and reparation awarded.

C. E. Childe and H. D. Bergen for complainant.

John C. Brooke and Robert W. Fyfe for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. Our conclusions differ from those proposed by him.

Complainant is a corporation manufacturing stock and poultry feeds and remedies at Omaha, Nebr. By complaint filed February 28, 1921, it alleges that the charges assessed on seven less-than-car-load shipments of ground wormseed made between May 8, 1917, and March 13, 1918, both inclusive, from Chicago and South Elgin, Ill., to Omaha, were illegal and unreasonable. We are asked to award reparation and to prescribe reasonable rates for the future. Rates will be stated in cents per 100 pounds and are for less than carloads.

The shipments consisted of ground domestic wormseed, used by complainant in the manufacture of hog-regulating compounds and poultry and stock feed. Complainant has facilities for grinding seed at Omaha and receives shipments in both the ground and unground state. This seed had been reduced to granules about the size of granulated sugar.

Apparently the shipments were described in the bills of lading as wormseed. On some of the expense bills they were described as "wormseed" and on others as "ground animal food condiments." They moved over the Chicago & North Western for an average distance of about 480 miles. Charges aggregating \$101.80 were collected on six, packed in barrels and aggregating 12,736 pounds, at the first-

class rate of 80 cents, and \$50.80 was collected on one, packed in bags and weighing 3,175 pounds, at the double first-class rate of \$1.60. On the four shipments made prior to Federal control, aggregating 8,798 pounds, the charges were \$70.30; on the three shipments made during Federal control, aggregating 7,113 pounds, the charges were \$82.30.

The first-class rate on the shipments in barrels was apparently applied under the governing western classification, which provided and provides a rating of first class on—

Condiments, N. O. I. B. N., for Animal Feeds, Tonics or Regulators, consisting of Barks, Herbs, Leaves, Roots and Seeds, ground: In bulk in barrels or boxes, L. C. L.

Drugs or Medicines, N. O. I. B. N., other than liquid: In glass or earthenware packed in barrels or boxes, and in bulk in barrels or boxes, L. C. L.

Seeds, N. O. I. B. N., in bags, barrels or boxes.

The double first-class rate on the shipment in bags was apparently applied under the so-called package rule of the classification, which provided as follows:

Rule 8.

Section 1. Unless otherwise provided for in the Classification, all freight shipped in crates, bales, bags or bundles will take when shipped in crates the next class higher (greater) than in boxes, and when shipped in bales, bags or bundles one class higher (greater) than in crates.

Under this rule the rating on an article in bags, not specifically rated in the classification when so packed, would be two classes higher than on the commodity in boxes. Inasmuch as western classification did not, at this time, provide any rating between first class and one and one-half times first class, two classes higher than first class would be double first class, as charged.

Complainant contends that the charges were illegal to the extent that they exceeded the contemporaneous third-class rate of 45 cents under the following classification item:

Seeds,

Wormseed (Jerusalem Oak Seed):

Class.

In bags, barrels or boxes, L. C. L.----- 3

Complainant's contention can not be sustained because that rating did not cover ground wormseed. The first-class rate was applicable on the six shipments in barrels but not on the shipment in bags.

Defendants made no attempt to show that transportation conditions warranted higher class rates on ground wormseed in bags than in barrels. The ratings on flour in cloth bags and on ground or unground coffee in paper bags are the same as in barrels. The ratings

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on many different kinds of seed, ground beans, bean meal, ground peas, and flaxseed oil cake are also the same in bags as in barrels.

Complainant contends that the rating on ground wormseed should not exceed that on wormseed unground. The classification provides the same ratings on the following articles, ground and not ground: coffee, spices, edible dried beans and peas, and flaxseed. Ground wormseed is worth only about 1 cent per pound more than the unground. There is no material variation in density between ground and unground wormseed, and the grinding does not materially alter the character or change the use of the commodity.

Complainant compares the rates and ratings applied with those on other kinds of seed and other articles in less than carloads, of which the following are illustrative: alfalfa, broom corn, canary, celery, cherry, clover, cotton, pumpkin, rape, and sunflower seed, in bags, barrels, or boxes, third class; flower or garden seeds, n. o. i. b. n., in bags, barrels, boxes, or in seed cabinets in boxes or crates, third class; ground beans and ground peas, third class; wild mustard, flax (linseed), peach, and raisin seed, fourth class; corn, wheat, rye, oats, fourth class; buckwheat flour in cloth bags or barrels, fourth class; coffee, roasted, ground, in bulk in barrels or boxes, fourth class; and linseed oil cake or linseed oil cake meal, in bags or barrels, fourth class. The value of ground and unground wormseed is shown by complainant to be less than that of many other seeds to which the third-class rating applies.

Defendants have not seriously undertaken to defend the reasonableness of the ratings and rates applied. They refer to powdered wormseed imported from the Levant, on which the price quoted by drug millers range from \$1.25 to \$1.30 per pound, and state that such values warrant the former rating of first class, but that in establishing a rating of second class on powdered wormseed in bags and barrels or boxes, in less than carloads, effective April 1, 1921, the classification committee took into consideration the statement of manufacturers that the large portion of the movement of wormseed was of the lower priced ground articles, normally 6 to 8 cents per pound, which are used as ingredients in stock remedies. We are not here considering rates or ratings on imported powdered wormseed of high value, but the fact that the rating thereon is now lower than on the ground wormseed of lower value comprised in these shipments supports complainant's contention that the rates assailed were unreasonable.

We find that the rates assailed were, are, and for the future will be unreasonable to the extent that they exceeded, exceed, or may exceed the contemporaneous third-class rates from and to the same points. We further find that complainant made the shipments as

described, and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$30.70 from the Chicago & North Western and in the sum of \$50.29 from the director general, as agent, with interest.

An appropriate order will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1474.

ASPHALT AND OTHER PETROLEUM PRODUCTS TO
IOWA POINTS FROM MISSOURI, KANSAS,
OKLAHOMA, AND ARKANSAS.

Submitted February 3, 1922. Decided April 21, 1922.

Proposed change in the application of rates on asphalt, road oil, and wax tailings from producing points in Missouri, Kansas, Oklahoma, and Arkansas to points in western trunk-line territory and other points found not justified. Suspended schedules ordered canceled without prejudice to right of respondents to file new schedules when the rates on refined and on low-grade oils have been properly related.

G. A. Hoffelder and *E. G. Hyett* for respondents.

J. H. Henderson and *Walter Condran* for State of Iowa; *H. F. Sundberg* for Iowa Traffic League and Cedar Rapids Chamber of Commerce; *A. B. Combs* for Iowa Independent Oil Men's Association, League of Iowa Municipalities, and Marshall Oil Company; *B. C. Drury* for Iowa Railway Commission; *E. G. Wylie* for Greater Des Moines Committee; and *A. T. Sindel* for Western Petroleum Refiners' Association.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

Lewis, Commissioner:

By schedules filed to become effective January 15, 1922, and subsequent dates, respondents propose to change the application of the rates on asphalt, asphaltum, including petroleum asphaltum, petroleum road oil, and petroleum wax tailings from points in Missouri, Kansas, Oklahoma, and Arkansas to points in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Canada. Upon protest by the State of Iowa the schedules were suspended until June 14, 1922. Protests were also made at the hearing on behalf of various shippers and receivers of oil in that State, and on behalf of the Western Petroleum Refiners' Association. Except as noted, rates herein are stated in cents per 100 pounds.

The application of the present rates is made by grouping petroleum and its products in three different items, designated in the tariffs as items 5, 10, and 15. Item 5 includes gasoline and refined
O. I. C. O.

oils and is not in issue. Item 10 includes petroleum fuel oil, gas oil, and crude oil. Item 15 includes asphalt, asphaltum, petroleum asphaltum, in solid form, in packages named, and petroleum road oil and petroleum wax tailings in tank cars. Respondents propose to consolidate the descriptions in items 10 and 15, and to apply rates named under item 10 on the consolidated description. The effect would be to increase the rates on the commodities included under item 15 to all points to which the rates on the commodities under item 10 are now higher. It is because of the increases that would result that protestants object to the proposed schedules. In a few instances, the item 15 rates are slightly higher than the item 10 rates. This is explained by the fact that the flat increase of 4.5 cents which was substituted for the increase of 25 per cent under General Order No. 28 was confined to petroleum and the products thereof classified fifth class, which had the effect of continuing the 25 per cent increase on the commodities in item 15 which take class D rating in western classification.

The present rates are published from three groups of origins, namely, the Kansas City, the Kansas, and the Oklahoma groups, designated as Groups 1, 2, and 3, respectively. The rates on fuel, gas, and crude oils to a large number of points in Iowa are either the same as, or from 0.5 to 3.5 cents and in some cases 5.5 to 7 cents less than, the rates on refined oils. The present rates on asphalt, road oil, and wax tailings are generally from 1 to 8.5 cents less than the rates on fuel, gas, and crude oils which would, therefore, represent the amounts of the increases under the proposed schedules. Protestants show that if the proposed schedules become effective rates to 85 out of 100 county-seat towns in Iowa will be increased. Substantially the same relative rate situation exists to many points in Illinois and other States in western trunk-line territory. Exhibits were introduced on behalf of protestants showing numerous shipments of road oil during 1921 from Tulsa and Cushing, Okla., respectively, to various points in Illinois, Missouri, Iowa, and Wisconsin. These exhibits show that had the proposed rates been in effect the charges would have exceeded those collected on the shipments by \$9,735.96.

In justification of the proposed schedules, respondents rely chiefly on *National Petroleum Asso. v. A., T. & S. F. Ry. Co.*, 37 I. C. C., 287, where we said at page 292:

Oil sold for road purposes may be a fuel oil in the sense that it can be used also for fuel purposes; on the other hand oil sold for fuel oil may not infrequently be entirely suitable also for road and other purposes.

In *Midcontinent Oil Rates*, 36 I. C. C., 109, we had under consideration the entire structure of oil rates from Kansas and Oklahoma

fields to points in Illinois, Iowa, Nebraska, Missouri, Colorado, Utah, and elsewhere. In that case we prescribed specific rates on the higher-grade oils to representative destinations throughout the territory there involved, including Chicago, Ill., and St. Louis, Mo., and rates on the lower-grade oils such as asphalt, asphaltum, road oil, and fuel oil to the latter cities 5 cents less than those prescribed on the higher-grade oils. At page 129 of the report we said:

What we have found with respect to rates on the lower grades of oil when shipped to St. Louis and Chicago should be applied in just relationship to other points, although not specifically referred to in this proceeding.

Following the above decision, rates on the low-grade oils included in items 10 and 15 were established to numerous destinations, including St. Louis and Illinois points, 5 cents less than the rates on the refined oils embraced in item 5. As has been shown, however, rates on this basis were not established generally throughout the destination territory here under consideration. This has resulted in numerous complaints, as a result of which we have uniformly adhered to the principle announced in the *Midcontinent case, supra*, respecting the differential that should be maintained between the rates on the refined and low-grade oils. See *Fort Dodge Commercial Club v. Director General*, 63 I. C. C., 357, and cases there cited; also *Western Petroleum Refiners Asso. v. Director General*, 66 I. C. C., 426.

Respondents admit that there is no justification for higher rates on road oil than on fuel oil. They state that the matter of relating the rates on low-grade oils to those on refined oils in conformity with the differential basis fixed by us in the *Midcontinent case*, and others, has been under consideration for some time, but that no action has been taken and none is contemplated pending our decision in *Reduced Rates, 1922, infra*, 676.

There is a considerable movement of road oil from the midcontinent field to points in Iowa, as well as to other points in the destination territory here considered. Road oil is used extensively on roads and highways through villages and towns. It is one of the cheapest oils, having practically the same value as fuel oil. Road oil is heavier than refined oil, also somewhat heavier than fuel oil. The estimated weights upon which charges are based are 6.6 pounds per gallon on refined oil, 7.4 pounds per gallon on fuel oil, and 8 pounds per gallon on road oil. Because of this difference in the estimated weights, some of the present rates on road oil to Iowa points produce freight charges per gallon, per barrel, or per car in excess of the charges on the same unit of refined oil. If the proposed schedules should become effective, this condition would be accentuated.

We find that respondents have not justified the suspended schedules. An order will be entered requiring their cancellation and discontinuing this proceeding. This is without prejudice to the right of respondents to renew their proposals here made by filing new schedules when the rates on refined and on low-grade oils from the producing territory to the destination territory here under consideration have been properly related.

68 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1467.
RIPRAP BETWEEN POINTS IN TEXAS AND LOUISIANA.

Submitted February 26, 1922. Decided April 12, 1922.

Proposed change in the description of riprap for interstate application between points in Texas, and between points in Texas and points in Louisiana and Arkansas, found justified. Order of suspension vacated and proceeding discontinued.

Horace Booth, J. C. Mangham, A. T. Witcher, and A. C. Fonda for respondents.

H. C. Earga, F. E. Potts, E. Eikel, and C. J. Howard for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, CAMPBELL, AND COX.
BY DIVISION 3:

By schedules filed to become effective January 2, 1922, respondents propose to supplement their tariff description of riprap as affecting rates between points in Texas, and between points in Texas and points in Louisiana and Arkansas. Upon protest of the Dittlinger Lime Company, engaged in the stone business at New Braunfels, Tex., and others, the operation of the schedules, in so far as they relate to interstate traffic, was suspended until June 1, 1922.

The present description does not define riprap; the description proposed is "Rip Rap (small and irregular shaped rock ranging in size up to 200 pounds weight)."

The record contains considerable testimony tending to define the term riprap and discussing the possibility of distinguishing it from rough stone for building purposes. Riprap is used chiefly in the construction or improvement of harbors, and the principal movement in this territory is from points in Texas to the Texas Gulf ports. Apparently there has been no interstate movement.

Respondents gave the history of rates in Texas on riprap. They stated that prior to August 4, 1910, this commodity moved under rough-stone rates, but on that date the Railroad Commission of Texas prescribed the lower crushed-stone rates on riprap in pieces weighing less than 200 pounds each. On March 23, 1911, that commission issued a circular in which it ruled that broken stone under 200 pounds

in weight would take the crushed-stone rates, and that riprap, there defined as small and irregular-shaped rock ranging in size up to 200 pounds and analogous to crushed stone, would take the same rates. Respondents urge that since that time the rough-stone rates have been applicable on rough angular stone in excess of 200 pounds in weight, and say that the proposed change in description effects no increase in rates.

The changed description, in so far as it applies to intrastate traffic, was not suspended. It does not seem that interstate traffic will be affected thereby. If any such traffic should develop, in order to avoid misunderstanding, the tariff description should be amended to read: "Rip Rap (irregular-shaped rock) in pieces ranging up to 200 pounds weight."

We find that the proposed schedules have been justified. An order will be entered vacating our order of suspension and discontinuing this proceeding.

68 I. C. C.

No. 12154.

NEW YORK & NEW JERSEY LUBRICANT COMPANY
v.
DIRECTOR GENERAL, AS AGENT, LEHIGH VALLEY
RAILROAD COMPANY, ET AL.

Submitted November 26, 1921. Decided April 15, 1922.

Rates on petroleum lubricating oil and grease, in carloads, from Newark, N. J., to Charlotte, N. C., and Atlanta, Ga., found unreasonable and unduly prejudicial. Reparation awarded.

Lewis H. Rubin for complainant.

John F. Finerty and *Thomas M. Woodward* for director general, as agent.

E. H. Burgess for defendant carriers.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

BY DIVISION 2:

Exceptions to the examiner's proposed report were filed by the director general, as agent, and the case was orally argued before us.

Complainant, a corporation engaged in manufacturing petroleum products at Newark, N. J., by complaint filed January 27, 1921, alleges that the rates charged on petroleum lubricating oil and grease, in carloads, from Newark to Charlotte, N. C., and Atlanta, Ga., during the period from January 27 to June 25, 1919, were unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked on 10 shipments to Charlotte and 8 shipments to Atlanta during the period stated. Rates will be stated in cents per 100 pounds.

The shipments moved over the defendant carriers' lines. Charges on the shipments to Charlotte were collected at the applicable fifth-class rate of 65 cents. Charges on the shipments to Atlanta were based on a rate of 77.5 cents. The applicable rate to the latter point was 68.5 cents and these shipments were therefore overcharged.

Complainant has distributing houses at Charlotte and Atlanta and meets competition of other manufacturers of petroleum lubricating oil and grease located at points in the New York rate group, 68 I. C. C.

especially one at Bayway, N. J., which also has distributing houses at Charlotte and Atlanta.

There were contemporaneously applicable from Jersey City, N. J., and other New York rate points, including Bayway, to Charlotte and Atlanta, joint commodity rates of 47.5 cents and 59.5 cents, respectively. Newark is directly intermediate by way of defendants' lines between Jersey City and the points of destination concerned. The rates of 47.5 cents and 59.5 cents were established subject to rule 77 of our Tariff Circular 18-A, under which upon request defendants were obliged to establish these rates from Newark to Charlotte and Atlanta. After the shipments moved, on June 25, 1919, such rates were established. The delay in their earlier publication is stated to be the ignorance on the part of defendants that Newark was a shipping point for petroleum lubricating oil and grease. Defendants offered evidence intended to show that the rates complained of were not unreasonable. Except under unusual conditions, not present in the instant case, we have uniformly awarded reparation on shipments moving from intermediate points under rates that were higher than from a more distant point, where the rate from the latter point was established subject to rule 77.

We find that the rates complained of were unreasonable and unduly prejudicial to the extent that they exceeded 47.5 cents per 100 pounds to Charlotte and 59.5 cents to Atlanta; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$1,069.84, with interest.

An appropriate order will be entered.

68 I. C. C.

No. 11988.
FOX PAPER COMPANY ET AL.
v.
DIRECTOR GENERAL, AS AGENT.

Submitted November 28, 1921. Decided April 8, 1922.

Rates on coal, in carloads, from Seelyville and Big Vein, Ind., to Rialto and Crescentville, Ohio, found unreasonable. Reparation awarded.

F. M. Renshaw for complainants.

Guernsey Orcutt and *Thomas M. Woodward* for defendant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

BY DIVISION 2:

Exceptions were filed by defendant to the report proposed by the examiner, and the case was orally argued.

Complainants are corporations engaged in manufacturing paper and paperboard at Rialto and Crescentville, Ohio. In their complaint, filed November 10, 1920, it is alleged that the rates charged for the transportation of one carload of coal shipped from Seelyville, Ind., to Rialto, three carloads from Big Vein, Ind., to Rialto, and five carloads from Big Vein to Crescentville during August, 1918, were unreasonable. We are asked to award reparation. Rates will be stated in amounts per net ton.

The destinations, Rialto and Crescentville, are 22.4 and 20.4 miles, respectively, north of Cincinnati, Ohio, on the Pittsburgh, Cincinnati, Chicago & St. Louis, hereinafter called the Pan Handle. Seelyville is on the same road, 7.5 miles east of Terre Haute, Ind., and 184.9 miles from Rialto via Richmond, Ind. Big Vein is on the Chicago, Terre Haute & Southeastern, hereinafter referred to as the Southeastern, about 36 miles south of Terre Haute. The shipment from Seelyville to Rialto, weighing 121,100 pounds, moved directly over the Pan Handle and was charged \$151.38 at a rate of \$2.50, 80 per cent of the sixth-class rate under exceptions to official classification. The eight carloads from Big Vein aggregated 744,200 pounds in weight, and freight charges of \$1,157.75 were collected, based on various rates, ranging from \$3 to \$3.50. They were specifically routed over the Southeastern to Terre Haute, Cleveland,

Cincinnati, Chicago & St. Louis to Cincinnati, and Pan Handle to destinations. An examination of the tariffs indicates that the legal rate over this route was \$3.60, constructed by combination of the following separately established factors: 70 cents, Big Vein to Terre Haute; \$1.50, Terre Haute to Cincinnati; \$1.40, Cincinnati to Crescentville and Rialto. The shipments from Big Vein were therefore undercharged. All nine cars were consigned to complainant Fox Paper Company, f. o. b. mines, and freight charges were paid by that company.

Prior to the summer of 1918 there was no appreciable movement of Indiana coal into Ohio, and complainants obtained their coal from mines in Kentucky and West Virginia. In June, 1918, however, zoning regulations promulgated by the United States Fuel Administration forced complainants to procure coal elsewhere, and they thereupon purchased the shipments here considered. Following the development of a movement into Ohio from Indiana mines resulting from the regulations of the fuel administration, rates were published on a basis lower than the former basis of 80 per cent of sixth-class rates. Effective February 5, 1919, rates from Seelyville of \$1.65 to Crescentville and Rialto and \$1.50 to Cincinnati were established via the Pan Handle. On October 5, 1918, rates from Big Vein of \$1.50 to Cincinnati and \$1.70 to Hamilton, Ohio, went into effect over the Southeastern and the Baltimore & Ohio. Crescentville and Rialto are between Cincinnati and Hamilton on the Pan Handle.

Complainants cite a number of contemporaneous rates to Rialto from various points in Kentucky, West Virginia, and Virginia, ranging from \$1.60 to \$2.05 for distances between 168 and 466 miles, yielding ton-mile earnings from 3.8 to 9.74 mills. The following statement, based on exhibits introduced by complainants, compares the rates charged, the applicable rates, and ton-mile and car-mile earnings thereunder with contemporaneous rates from Illinois and Indiana mines to certain destinations in Ohio:

From—	To—	Distance.	Rate.	Car-mile earnings. ¹	Ton-mile earnings.
		<i>Miles.</i>		<i>Cents.</i>	<i>Mills.</i>
Seelyville, Ind.....	Rialto, Ohio.....	184.9	\$2.50	64	13.52
Big Vein, Ind.....	do.....	239.6	\$3.20	64	13.35
Do.....	Crescentville, Ohio.....	237.6	\$3.04	61	12.79
Do.....	Rialto, Ohio.....	239.6	\$3.60	72	15.02
Do.....	Crescentville, Ohio.....	237.6	\$3.60	72	15.15
Hillsboro, Ill.....	Arcanum, Ohio.....	288.1	1.70	28	5.9
Do.....	Cincinnati, Ohio.....	303.8	1.90	30	6.25
Do.....	Celina, Ohio.....	313.5	1.87	28	5.96
Do.....	Columbus, Ohio.....	379.4	1.90	24	5
Coal City, Ind.....	Glen Karn, Ohio.....	185.2	1.43	37	7.72
Do.....	St. Marys, Ohio.....	304.8	1.55	24	5.08
Blackburn, Ind.....	Glen Karn, Ohio.....	245.5	1.50	25	6.11
Do.....	St. Marys, Ohio.....	365	1.62	21	4.44

¹ Based on average loading of 48 tons per car.

² Average rate actually charged.

³ Applicable rate.

For defendant it is testified that there is a large movement of coal from Kentucky and West Virginia to Cincinnati and its vicinity; that there is no such natural movement from the Indiana mines; and that the shipments here considered were sporadic. It is further stated that two-thirds of the coal shipped to Cincinnati moves by water and that the rail rates are depressed by the influence of water competition. Defendant contends that the rates charged were reasonable for the service performed, pointing out that the shipments from Big Vein moved over three lines, though they could have been routed over but two. The general absence of commodity rates on coal from Indiana to Ohio is attributed to the inability of Indiana operators to market their coal profitably in Ohio theretofore, and it is stated by one of defendant's witnesses that "if there had been a desire on the part of the Indiana producers to reach Ohio territory rates would have been established lower than the 80 per cent basis."

We find that the rate from Seelyville to Rialto was unreasonable to the extent that it exceeded \$1.65 and that the rate from Big Vein to Rialto and Crescentville was unreasonable to the extent that it exceeded \$1.70; that complainant Fox Paper Company made the shipments referred to in the complaint and paid and bore the freight charges thereon; that said complainant has been damaged to the extent that the charges paid exceeded those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$576.65, with interest. Defendant is authorized to waive collection of the undercharges.

An order awarding reparation will be entered.

68 L. C. C.

No. 12809.

EAST SPRINGFIELD CITIZENS' CLUB ET AL.

v.

AMERICAN RAILWAY EXPRESS COMPANY.

Submitted January 6, 1922. Decided April 20, 1922.

Refusal of defendant to include the East Springfield section of Springfield, Mass., within the limits for the free collection and delivery of express shipments from and to that city not found to be unjustly discriminatory. Complaint dismissed.

Leon J. Gour for East Springfield Citizens' Club.

A. M. Hartung and *John R. Phillips, jr.*, for defendant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN AND POTTER.

BY DIVISION 4:

No exceptions were filed to the report proposed by the examiner.

Complainants allege that the refusal of defendant to extend its free collection and delivery service in the city of Springfield, Mass., so as to include that section known as East Springfield, while contemporaneously affording such service to the so-called Park and Franconia sections, is unjustly discriminatory in violation of section 2 of the interstate commerce act.

The initial complainant is an association organized for the betterment of conditions in the comparatively new section of East Springfield. The other complainants are the Westinghouse Electric & Manufacturing Company; Rolls-Royce, Incorporated; Springfield Tool Company; Storms Drop Forging Company; and the Harley Company, all but the last named having located in East Springfield within about five years. A grain company and a lumber company are also located in this section. It appears that the extension of the free delivery and collection service is sought primarily on behalf of these industries. So far as residences are concerned, complainants are not asking that the service cover more than three or four short streets in addition to the three main highways.

The Park section is an old thickly populated residential district south of the business center of Springfield and having only two industrial plants, the Diamond Match Company and a small manufactory of chemicals. The Franconia section lies just beyond and

is wholly a residential district, somewhat newer than the Park section, and as yet thinly populated. The East Springfield section is newly developed, and is chiefly a manufacturing district, separated from the main part of the city by about a half mile of practically uninhabited territory.

Express shipments from or to Springfield begin or end their rail transportation at the Union Depot. The local distribution is from and to this depot and two other points, a near-by office of defendant and the Bay State Warehouse. The distances to various sections, as stated by complainants and defendant, differ somewhat, the former estimating distances from the warehouse by map scale and the latter from the depot by cyclometer. Defendant's estimates appear more nearly accurate, and they will be used hereinafter.

Complainants do not allege that the failure of defendant to extend its free collection and delivery limits to the East Springfield section is unreasonable, but merely that it is unjustly discriminatory under section 2 of the act. In *Interstate Com. Commis. v. B. & O. Railroad*, 145 U. S., 263, 281, the Supreme Court of the United States said:

In order to constitute an unjust discrimination under section 2, the carrier must charge or receive directly from one person a greater or less compensation than from another, or must accomplish the same thing indirectly by means of a special rate, rebate or other device; but in either case it must be for a "like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstances and conditions."

It becomes necessary, therefore, to consider whether the "kind of traffic" of the East Springfield section is "like" the traffic of the Park and Franconia sections, and whether the transportation would be "under substantially similar circumstances and conditions." As before stated, the principal express traffic in East Springfield which would receive the benefit of the desired free collection and delivery service is that of the manufacturing concerns, parties to the complaint. During the first six months in 1921 it is shown that there were 2,767 outbound and inbound shipments from and to East Springfield, over 2,500 of which were for the Westinghouse Electric & Manufacturing Company and the Rolls-Royce company alone. The shipments of the Westinghouse Company consist principally of small motors, electrical appliances and parts, the average weight being about 130 pounds. The express traffic of the Rolls-Royce company is principally inbound and consists of automobile head lamps and delicate automobile parts. The average weight of these shipments is not shown. The shipments of the Storms Drop Forging Company consist of forgings and dies averaging about 54 pounds. The character of the traffic of the other complaining plants

is not disclosed. The traffic of the Park and Franconia sections is chiefly to and from householders, the shipments of the Diamond Match Company and the small chemical manufactory being the only important exceptions. The average weight of the shipments of these sections is materially less than in the case of East Springfield.

From the Union Depot the present free collection and delivery limits extend 1.9 miles in the direction of East Springfield. The Springfield Tool Company, the most distant manufacturing plant in that section, is 3.1 miles beyond these limits, or 5 miles from the depot. The most distant house in the Park and Franconia sections is 3.6 miles from the depot. All told, there are approximately 370 families in East Springfield as compared with 3,777 families in the Park and Franconia sections. The testimony indicates that the density of residences in the latter section is probably not substantially greater than in East Springfield, but defendant states that while it holds itself out to deliver and collect in the Franconia section, no such service has, as a matter of fact, been rendered during the past three years.

The service of free collection and delivery is performed in the Park section with a 2-ton truck driven by one man. Defendant estimates that to collect and deliver the heavier shipments of the East Springfield section would necessitate the acquisition of a 3.5-ton electric truck, requiring a driver and helper. At the present time several of the complaining plants perform the service with their own trucks in connection with other hauling.

Upon this record we find that it has not been shown that the express traffic to and from the East Springfield section is "like" that to and from the Park and Franconia sections, within the meaning of that word as used in section 2 of the act; and that the free collection and delivery of express shipments in the East Springfield section, as compared with such service in the Park and Franconia sections, would not be "under substantially similar circumstances and conditions." As aforesaid, the reasonableness of the practice of defendant in refusing to extend its free collection and delivery limits to the East Springfield section is not in issue.

The complaint will be dismissed.

No. 12805.¹

SCHÜHLE'S PURE GRAPE JUICE COMPANY, INCORPORATED, ET AL.

v.

DIRECTOR GENERAL, AS AGENT, NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, ET AL.

Submitted January 28, 1922. Decided April 20, 1922.

Four carloads of grape juice from Highland, N. Y., to Little Rock, Ark., and Houston, Tex., found not to have been misrouted. Complaints dismissed.

Ernie Adamson and *C. W. Nash* for complainants.

W. L. Barnett for defendants.

E. C. Blanchard for director general, as agent.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

Exceptions were filed by the complainants to the report proposed by the examiner and the case was orally argued before us.

Complainants are the Schühle's Pure Grape Juice Company and the United Drug Company, the former engaged at Highland, N. Y., in the manufacture and sale of grape juice, and the latter engaged in the manufacture and sale of drugs and soda-fountain supplies with its principal office at Boston, Mass. They allege that the rates charged on four carloads of grape juice from Highland to Little Rock, Ark., and Houston, Tex., in January and February, 1919, were unjust and unreasonable. The prayer is for reparation only. Rates will be stated in cents per 100 pounds.

The sole basis of the complaints is that the shipments, which were delivered unrouted to the Central New England, should have been forwarded via rail-water-and-rail routes at rates lower than those applied for the all-rail movement of the shipments.

The shipments moved all rail at rates of \$1 to Little Rock and \$1.64 to Houston. It is complainants' contention that contemporaneously there were in effect via the Central New England and rail connections to New York, N. Y., ocean line to Galveston, and rail lines thence to destinations named, rates of 86.5 cents to Little Rock and 85.5 cents

¹ This report also embraces No. 12894, Same v. Same.

to Houston. The rate of 86.5 cents to Little Rock was not applicable from Highland on shipments originating on the Central New England.

If a shipper desires his shipment to move via a water-and-rail route that is cheaper than the all-rail route, he must in delivering it to an initial carrier specify such routing, otherwise it is understood that the shipment is to move via an all-rail route. *Hirsch v. Erie R. R. Co.*, Docket No. 3773, unreported; *Conference Ruling 190*. When the movement is all rail, with certain exceptions, the initial carrier assumes the responsibility for the movement over the cheapest available route unless the consignor gives directions to the contrary. *Conference Ruling 214 (c)*; *Chattanooga Implement & Mfg. Co. v. L. & N. R. R. Co.*, 40 I. C. C., 146.

We find that the shipments were not misrouted. An order dismissing the complaints will be entered.

68 I. C. C.

No. 10959.

PRESCOTT & NORTHWESTERN RAILROAD COMPANY

v.

MISSOURI PACIFIC RAILROAD COMPANY ET AL.

Submitted October 18, 1920. Decided April 20, 1922.

Complaint of the Prescott & Northwestern Railroad Company seeking release from the application of our orders in *The Tap Line case*, 31 I. C. C., 490, not sustained in view of the identity of interest existing between it and the majority stockholders of the Ozan-Graysonia Lumber Company. Complaint dismissed.

John S. Burchmore and Luther M. Walter for complainant.

Henry G. Herbel and C. C. P. Rausch for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND EASTMAN.

By DIVISION 1:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant herein, the Prescott & Northwestern Railroad Company, operates a railroad in the State of Arkansas and was a respondent in *The Tap Line case*, 23 I. C. C., 277, 549. By our second supplemental report in that proceeding, 31 I. C. C., 490, following the decision of the Supreme Court in *Tap Line cases*, 234 U. S., 1, we found complainant to be a common carrier in respect of its proprietary as well as its nonproprietary traffic, ordered the reestablishment of through routes and joint rates between it and connecting trunk lines, and provided that its maximum divisions of joint rates on lumber should not exceed certain prescribed amounts. By our supplemental orders of April 7, 1919, and September 8, 1920, we authorized increases in such divisions corresponding to the increases in joint rates made pursuant to General Order No. 28 of the Director General of Railroads and to our findings in *Increased Rates, 1920*, 58 I. C. C., 220, respectively. Complainant's present divisions of the lumber rates are the maxima so prescribed and are as follows:

For switching a distance of one mile or less from the junction, \$3.30 per car; over one mile and up to three miles from the junction, \$4.50 per car; on 68 I. C. C.

shipments from points over three miles and not over 10 miles from the junction, 3 cents per 100 pounds; over 10 miles and not over 20 miles from the junction, 4 cents per 100 pounds; over 20 miles and not more than 40 miles from the junction, 5 cents per 100 pounds; over 40 miles from the junction, 6 cents per 100 pounds.

Complainant alleges that because of the foregoing orders defendants have failed and refused to allow it just and reasonable divisions of the joint rates on the lumber traffic originating on its line. It does not ask us, however, to fix just and reasonable divisions or to modify in any way the order of September 8, 1920, now effective, but merely to release it from the application of that order, so that it may bargain freely with its trunk-line connections for greater divisions. The question before us, therefore, is not whether the present divisions are fair, but whether there have been such changes in the circumstances and conditions surrounding the ownership, control, and operation of complainant as would warrant us in finding that there is no longer reason, in the public interest, for imposing limitations upon the divisions which it may receive out of the joint lumber rates. Complainant rests its claims upon certain changes in the nature of its traffic and corporate affiliations and upon the alleged invalidity of our orders in *The Tap Line case, supra*. Defendants offered no evidence and are willing to be guided by our determination of the matter.

Complainant's line extends from Prescott, Ark., to Highland, Ark., a distance of 33 miles. It connects with the Missouri Pacific at Prescott and with the Memphis, Dallas & Gulf at Tokio, Ark., 4 miles from Highland. Including Prescott and Tokio, there are 10 stations on the line, with a total population of between 6,000 and 7,000. At most of these stations complainant employs salaried agents. The nature of its traffic is indicated by the following comparisons of its tonnage and revenues in 1912, the date of our original order in *The Tap Line case, supra*, with those in 1919:

Products.	Tonnage, 1912.		Revenue, 1912.		Tonnage, 1919.		Revenue, 1919.	
	Tons.	Per cent.	Amount.	Per cent.	Tons.	Per cent.	Amount.	Per cent.
Agriculture.....	4,808	4.6	\$12,887	17.6	17,389	12.2	\$63,216	40.8
Animals.....	414	.4	1,338	1.8	267	.2	530	.4
Mines.....	5,617	5.4	6,438	8.8	120	.1	182	.1
Forests.....	89,152	85.4	44,515	60.8	116,790	82.8	75,109	48.5
Manufactures.....	2,318	2.2	3,174	4.4	4,954	3.5	8,525	5.5
Merchandise and miscellaneous...	2,124	2	4,851	6.6	2,374	1.7	7,364	4.7
Total freight.....	104,433	100	73,203	100	141,894	100	154,926	100
Total passenger.....			8,093				9,433	

This table shows that the agricultural tonnage, and more particularly the revenue therefrom, have increased materially. Forest-product tonnage, however, still preponderates. It also appears from complainant's exhibits that the relation of the proprietary traffic, i. e., the traffic of the controlling or affiliated industry, to that of all other shippers has undergone little change. The following comparisons are typical:

	Proprietary.				Nonproprietary.			
	Tons.	Per cent.	Revenue.	Per cent.	Tons.	Per cent.	Revenue.	Per cent.
1915.								
Lumber.....	21,787	16.5	\$13,125	11.2	1,422	1.1	\$921	0.8
Logs.....	78,025	59.2	38,195	32.6				
Other forest products.....					3,064	2.3	2,039	1.8
All other freight.....	220	.2	289	.3	27,350	20.7	62,359	53.3
Total.....	100,032	75.9	51,609	44.1	31,836	24.1	65,319	55.9
1919.								
Lumber.....	21,161	14.9	15,885	10.3	909	.6	645	.4
Logs.....	86,145	60.5	53,756	34.7				
Other forest products.....	231	.1	229	.1	6,963	4.9	4,594	.3
All other freight.....					27,093	19	79,819	51.5
Total.....	107,537	75.5	69,870	45.1	34,965	24.5	85,058	54.9

The evidence shows that for the most part complainant has operated at a deficit, but there is no proof that the deficits were ascribable to inadequate divisions of the lumber rates; and, as aforesaid, complainant is not asking us to prescribe larger divisions.

At the time of our decisions in *The Tap Line case, supra*, complainant and the Ozan Lumber Company were owned and controlled by the same interests. The Ozan Lumber Company was succeeded in 1915 or 1916 by the Ozan-Graysonia Lumber Company. The outstanding stock of complainant consists of 300 shares, par value \$100 each, of which 110 shares are owned by W. N. Bemis, former president of the Ozan Lumber Company, and now president of both complainant and the Ozan-Graysonia Lumber Company. Including Bemis, complainant has 11 stockholders. All of them own stock of the lumber company, their combined holdings aggregating 5,542 out of a total of 10,340 shares. It will thus be seen that the holders of a majority of the stock of the lumber company hold all the outstanding stock of the railroad.

The timber of the lumber company adjacent to the line of complainant has been cut and the territory which complainant serves with its own rails is now devoted largely to agricultural pursuits. The record shows, however, that complainant has trackage rights over the Memphis, Dallas & Gulf from Tokio to Shawmut, Ark., a distance of 28 miles, and thence over the Missouri Pacific, a dis-

tance of approximately 100 miles, into forests where the lumber company conducts logging operations; and that the logs are transported over these tracks to Tokio and thence over complainant's line to the mill of the lumber company at Dian, Ark., about 1 mile from Prescott. It is, therefore, evident that while the particular timber owned by the lumber company in 1912 has been cut, it has secured other timber which complainant transports from the forest to the mill.

Complainant questions the legal force and effect of our orders of April 7, 1919, and September 8, 1920, in *The Tap Line case, supra*, on the ground that they were issued without a full hearing and are merely "a perpetuation of the order entered years previously which had expired by limitation." If our order of September 8, 1920, has no force and effect, nothing would be accomplished by releasing complainant from its application, as complainant now requests. For present purposes it is sufficient to say that we believe that order to be valid and effective.

We have consistently refused to release any tap line from the application of the orders in *The Tap Line case, supra*, in the absence of complete separation of such tap line from the control of any lumber company in active operation and served by it. There has been no such separation in this case. On the contrary, there still exists a substantial community of interest between complainant and the Ozan-Graysonia Lumber Company and complete control of the former by the majority stockholders of the latter. In *Tap Line cases, supra*, the Supreme Court said:

It is doubtless true, as the Commission amply shows in its full report and supplemental report in these cases, that abuses exist in the conduct and practice of these lines and in their dealing with other carriers which have resulted in unfair advantages to the owners of some tap lines and in discriminations against the owners of others. Because we reach the conclusion that the tap lines involved in these appeals are common carriers, as well of proprietary as non-proprietary traffic, and as such entitled to participate in joint rates with other common carriers, that determination falls far short of deciding, indeed does not at all decide, that the division of such joint rates may be made at the will of the carriers involved and without any power of the Commission to control. That body has the authority and it is its duty to reach all unlawful discriminatory practices resulting in favoritism and unfair advantages to particular shippers or carriers. It is not only within its power, but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.

The above-quoted paragraph expresses succinctly the considerations of public policy upon which our orders in *The Tap Line case, supra*, have been based. Under the circumstances existing in this case it is clearly our duty to retain full control over complainant's divisions of joint rates on lumber. If complainant believes that its present divisions are less than reasonable, it may bring the matter to our attention in an appropriate proceeding.

An order dismissing the complaint will be entered.

68 I. C. C.

No. 12023.

ELLISON-WHITE CHAUTAUQUA SYSTEM, OF
PORTLAND, OREG.,

v.

DIRECTOR GENERAL, AS AGENT, ARIZONA EASTERN
RAILROAD COMPANY, ET AL.

Submitted October 1, 1921. Decided April 22, 1922.

Rules, regulations, and charges applicable to the transportation of complainants' Chautauqua outfits from Chicago, Ill., to the Pacific coast and return not found unreasonable or unduly prejudicial. Complaint dismissed.

George W. Gearhart, William C. McCulloch, and Rogers MacVeagh for complainants.

Charles A. Hart for defendant carriers.

Thomas M. Woodward for director general, as agent.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, LEWIS, AND COX.

AITCHISON, *Commissioner*:

Complainants operate a number of Chautauqua circuits, known collectively as the Ellison-White Chautauqua System, in western classification territory. They allege, by complaint filed December 15, 1920, that defendants' rules, regulations, and charges applicable to the transportation of Chautauqua outfits from Chicago, Ill., to the Pacific coast and return are unreasonable and unduly prejudicial in violation of sections 1 and 3 of the interstate commerce act. They seek an award of reparation and the establishment of reasonable and nonprejudicial rules, regulations, and charges for the future.

When the complaint was filed and prior thereto, the two complainants, as copartners, operated the system in question for their own account, but later they disposed of the business to a cooperative community organization by which they are paid salaries as managers. This organization operates for educational purposes and not for profit. Under a ruling of the Treasury Department no war tax is paid on the admission price charged.

The charges complained of are collected under certain rules and regulations, which need not be fully detailed here. The same rules and regulations cover theatrical effects and paraphernalia used in public entertainments and exhibitions in general. They apply to

68 I. C. C.

all complainants' circuits, but are here assailed only as they affect the so-called seven-day circuit operating from early in April to late in August from Chicago to the Pacific coast via southern lines through New Orleans and return via northern lines through St. Paul.

The seven-day circuit is designed to meet the needs of towns and small cities, and rural communities immediately tributary thereto. It affords performances for seven consecutive days at each stopping point on the circuit, and a different entertainment is given each day by different performers or "talent." After each day's performance the talent moves on to the next point, so that a number of performances are in progress concurrently, but at different places. The operation of this circuit requires from five to nine special baggage cars containing outfits consisting of tents, seats, scenery, lighting equipment, and other paraphernalia, but no personal baggage. These cars, like the talent, are generally moved from place to place, according to the convenience and needs of the Chautauqua, and sometimes in the same train with the talent. The carriers are informed a month or more in advance of the movement as to complainants' schedules, and the same baggage cars are generally used for the entire trip, lying idle only for short periods between each move.

Defendants' rules and regulations provide for the free transportation of one special baggage car containing paraphernalia, if the persons traveling on the same train with it number 25 or more. Complainants' seven-day circuit, however, does not afford such a party of 25. There are ordinarily less than 10, and complainants to secure a special baggage car are required under the rules and regulations to pay, in addition to the fares for these persons, an amount sufficient to make the total revenue equal 18½ fares, minimum \$30. The additional tickets bought are the measure of the charge for the baggage car furnished. During the period for which reparation is asked the amount thus paid in additional charges to make up the required sums was about \$17,000. A continuous stream of persons other than talent, but connected with the Chautauqua, moves along the same route from day to day without special baggage cars, and stops are made at many of the points where entertainment is given. It makes no substantial difference from the standpoint of defendants' cost of transporting a special baggage car whether the Chautauqua employees travel in parties of the required size or individually, except that the trains used by the individual traveler are equipped with baggage cars, which may be used at the option of the person traveling. The record indicates that approximately 50 per cent of the talent now exercises the right to the baggage-checking privilege. Complainants contend that

instead of being required to pay the additional charges just referred to they should be permitted to apply the fares paid by them for all persons over a period of a month or so toward making up the revenue required for the free transportation of the special baggage cars, and that in such instances the individual tickets indicate on their face that the baggage privilege is reserved to apply on the special baggage car. The performers and Chautauqua employees travel on all-year tourist fares, except when side trips are made, for which the usual standard fares are charged to and from the junctions with the main line.

Increases in transportation charges and other items of expense have necessarily been reflected in the quality of the entertainment given by complainants, as it has not been practicable to increase substantially the price of admission. Complainants accordingly contend that the present charges are out of proportion to the value of the service and more than the traffic should bear.

The tariff rule in question, as already indicated, is not limited to Chautauqua systems, but covers theatrical, amusement, and entertainment companies generally. Complainants' allegation of undue prejudice is based on the fact that the rule enables theatrical companies and other entertainers, regarded as competitors to some extent, to secure a special baggage car without cost when they have a party of 25 or more. But the same rule is open to complainants. Their inability to avail themselves of the advantages of the rule is due to the peculiar nature of their business, which requires a complete change of program at each point daily, while the theatrical companies which take advantage of the rule usually have a weekly change of program and are thus enabled to move their personnel en masse.

Defendants oppose any relaxation of the rule to meet the peculiarities of complainants' seven-day circuit, both because of the revenue loss that would be sustained directly, as well as indirectly, through the probable operation of devices and manipulations, and because they believe it would be impracticable for them to resist demands of others for exceptions to meet particular needs or desires.

Defendants point out that complainants' paraphernalia obviously is not baggage, and that they would be justified in refusing the traffic and leaving it to the express company. They also urge that even if the property be regarded as baggage, defendants, in providing special baggage cars without applying excess-baggage charges, are affording complainants a concession below what is the reasonable, normal, and standard basis of charge, as 150 pounds is all that each passenger is ordinarily allowed to have carried without extra charge. Using a 100-mile haul, for example, the rule under attack as applied to the seven-day circuit provides charges \$67.50

below what they would be if current excess-baggage charges were applied. Defendants also claim that as the present basis of charge is a substantial concession we can not, as a matter of law, require a further concession.

Defendants present statistical data to the effect that they are carrying special baggage cars at a loss. They claim that they are now of the view that they should never have allowed the present practice to fasten itself upon them. Apparently they are inclined to curtail and restrict it. The free transportation of a limited amount of baggage is an incident of, and is included within, the passenger-fare contract. Present passenger-transportation fares generally permit the free transportation of but 150 pounds of baggage per person. The allowance for 25 persons would be 3,750 pounds, considerably less than the normal capacity of a baggage car. Assuming that complainants' paraphernalia is comprehended within the term baggage, it is clear that a rule which provides for the furnishing of a free car for that number of persons contingent upon their traveling en bloc is liberal and reasonable, and that charges exacted from complainants for a special baggage car are warranted when the number of persons traveling is less than 25, unless, in the application of the rule, defendants unduly prefer complainants' competitors. But the allegation of undue prejudice must fall, as complainants' disadvantage, if any, is due to no act of defendants, but rather to complainants' inability to come within the terms of a rule reasonable in and of itself.

The allegations of the complaint have not been sustained and an order of dismissal will be entered.

68 I. C. C.

No. 12042.

ANDERSON & GUSTAFSON, INCORPORATED, ET AL.

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI, KANSAS &
TEXAS RAILWAY COMPANY, ET AL.

Submitted November 30, 1921. Decided April 8, 1922.

Rate on crude petroleum, in tank cars, from Wichita Falls, Tex., to Oklahoma City and Cushing, Okla., found to have been unreasonable. Reparation awarded.

W. W. Martin and J. E. Wyatt for complainants.

John F. Finerty and Alex M. Bull for director general, as agent.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

BY DIVISION 2:

Exceptions were filed by the director general, as agent, to the report proposed by the examiner, and the case was orally argued before us.

Complainants are corporations engaged in refining crude petroleum at Cushing and Oklahoma City, Okla. By complaint filed December 16, 1920, they allege that the rate of 32.5 cents charged on 10 tank-car loads of crude petroleum, shipped from Wichita Falls, Tex., to Oklahoma City, and 37 cents charged on 25 tank-car loads shipped to Cushing, between September 8 and 11, 1918, were unreasonable to the extent they exceeded a rate of 22.5 cents subsequently established. We are asked to award reparation. Rates are stated in cents per 100 pounds.

The 10 cars shipped to Oklahoma City were consigned by Anderson & Gustafson, Incorporated, a complainant, to the Atwood Refining Company, a complainant, which purchased them from the former company, f. o. b. destination, and paid the transportation charges in the first instance. The amount paid was then deducted from the invoice price. The transportation charges on the remaining 25 cars were paid and borne by Anderson & Gustafson, Incorporated, the real party in interest in this proceeding, hereinafter called complainant.

The shipments moved in tank cars owned by the shippers over the Missouri, Kansas & Texas via Atoka, Okla., 376 miles to Cushing

and 314 miles to Oklahoma City. Charges on the crude oil were collected at the applicable commodity rates on refined and crude oil of 37 cents to Cushing and 32.5 cents to Oklahoma City. On August 30, 1918, prior to the movement of these shipments, defendants were requested to reduce the rates to Cushing and on September 30, 1918, a rate of 22.5 cents was published on crude oil to that point and on October 6, 1918, the reduced rate was also made applicable to Oklahoma City. On October 22, 1919, these rates were further reduced to 20.5 cents to Cushing and 18.5 cents to Oklahoma City. It appears that at the time complainant made the shipments there was a shortage of crude petroleum in and near Cushing and Oklahoma City. Complainant states that on account of this emergency it did not wait until the rates were reduced.

Complainant contends that the rates of 37 and 32.5 cents in effect to Cushing and Oklahoma City should not have exceeded the rate of 22.5 cents, which was contemporaneously in effect to Tulsa, Sapulpa, and Okmulgee, Okla., points farther distant than the destinations here considered.

The rate of 37 cents to Cushing yielded 19.6 mills per ton-mile and the rate of 32.5 cents to Oklahoma City yielded 20.7 mills. These rates are compared with rates varying from 14 to 38 cents, yielding 5.01 to 13.94 mills, between various points for distances from 236 to 787 miles; and with rates ranging from 14.5 to 29.5 cents, yielding from 7.3 to 14.3 mills, from points in the midcontinent oil fields to various points for distances from 231 to 680 miles. The comparisons include a rate in the opposite direction of 22.5 cents from Cushing and Oklahoma City to Wichita Falls. Complainant cites rates for one-line and two-line hauls applicable in the States of Oklahoma, Kansas, Texas, and Louisiana, for distances equal to those from Wichita Falls to Cushing and Oklahoma City, which are less than 22.5 cents.

In *Atwood Refining Co. v. Director General*, 57 I. C. C., 22, we found that the rate of 32.5 cents on crude petroleum from Burkburnett, Tex., to Oklahoma City, 328 miles, was unreasonable to the extent that it exceeded the subsequently established rate of 22.5 cents. Complainant relies largely upon that decision, and its exhibits are for the most part substantially the same as those offered by the complainant in that case.

The director general states that complainant's comparisons include rates which we have heretofore recognized as depressed, but no evidence was offered by him.

We find that the rates charged were unreasonable to the extent that they exceeded 22.5 cents per 100 pounds; that complainant, Anderson & Gustafson, Incorporated, made the shipments as de-

scribed, and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

68 I. C. C.

No. 12030.

FEDERAL VALLEY RAILROAD COMPANY
v.
TOLEDO & OHIO CENTRAL RAILWAY COMPANY
ET AL.

Submitted February 23, 1922. Decided April 4, 1922.

Division of joint rates accorded complainant on bituminous coal from mines on its line to various interstate destinations not shown to have been or to be unjust, unreasonable, inequitable, or otherwise unlawful. Complaint dismissed.

Edward E. Gann, Ben B. Cain, Bird M. Robinson, and L. S. Cass,
for complainant.

W. N. King, Frank S. Lewis, and Clyde Brown for defendants.

REPORT OF THE COMMISSION.

CAMPBELL, *Commissioner*:

Exceptions were filed by complainant and defendants to the report proposed by the examiner and the case was orally argued.

By complaint filed February 1, 1921, as amended, it is alleged that the divisions accorded the Federal Valley Railroad Company out of the joint rates on bituminous coal from mines on its line to destinations in Illinois, Indiana, Michigan, Missouri, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin were, are, and for the future will be unjust, unreasonable, inequitable, and unduly prejudicial to complainant and preferential of defendants. We are asked to prescribe for the future just, reasonable, and equitable divisions of joint rates on coal to be received by complainant and the several defendants, and to require an adjustment of divisions on the basis established from the date on which the complaint was filed. In its answer, the Toledo & Ohio Central Railway Company, hereinafter referred to as the defendant, alleges that the divisions received by complainant are unreasonably high and asks that they be reduced. Divisions herein are stated in amounts per ton of 2,000 pounds.

The Federal Valley extends from Palos, Ohio, to Lathrop, Ohio, approximately 16 miles. In addition it operates 3.5 miles of sidings. It connects at Palos with the Kanawha & Michigan Railway,

a subsidiary of the defendant, and handles freight only. All of its dealings in the matter of divisions, car supply, etc., are with the defendant, which furnishes all the cars used in transporting coal from the mines on the line of the Federal Valley. More than 85 per cent of its outbound traffic consists of coal originated on its line. Some lumber is transported, but the traffic handled other than coal consists principally of supplies for the 10,000 inhabitants served along its line. The road has five stations, but Palos is the only agency point. At the time of the first hearing it served three mines having a combined rating of 1,347 tons per day. Another mine then in course of development, with an expected daily output of 500 tons, apparently has since commenced operations.

The equipment of the Federal Valley consists of three engines, seven flat cars, one steam shovel, and two cabooses, none of which goes off its line. As the mines are situated near the eastern end of its line, the Federal Valley performs a haul of approximately 32 miles, which consists of transporting the empty cars from Palos, approximately 16 miles with the grade, and hauling the loaded cars approximately the same distance to Palos against a grade which varies from 0.17 to 2 per cent. The railroad is constructed through a rough and hilly country. Along the line are two tunnels 1,656 feet long, and 2,119 feet of wooden bridges and trestles. The railroad administration, beginning in February, 1918, allowed the Federal Valley an arbitrary division of 20 cents on coal. In June, 1918, it was increased to 30 cents, and following the general increases effective August 26, 1920, it became 42 cents, which is its present division.

Complainant is the successor of a short line, the Marietta, Cleveland & Cincinnati Railroad, which was operated by a receiver during 1914. Thereafter the portion of the railroad extending from Palos to Lathrop was purchased for \$45,000 by an individual, stated to have represented the Black Diamond Company, the owner of the largest coal mine on the line. This individual subsequently sold the property to the latter company for a consideration of \$395,000 in stocks and bonds. Its stockholders, following an order of the Public Utilities Commission of Ohio and the Supreme Court of the State of Ohio, thereupon organized the Federal Valley, which since February 1, 1918, has operated the line as a common carrier. The stockholders of the Federal Valley are also the stockholders of the Black Diamond Company. The latter company's mines produced about 53 per cent of the coal tonnage transported during 1920 and approximately 82 per cent for the first 11 months of 1921. Upon application of the Federal Valley to secure authority for the issuance of capital stock the value of the property was fixed at \$368,000 by the Ohio commission, which authorized the issuance

of stock amounting to \$442,800. The president of the company could not state whether the valuation placed upon the property was based on an actual physical examination by engineers. Our valuation of the property has not been completed and we are unable to determine from the record the rate-making value of the road.

During 1920 the Federal Valley originated 146,458 tons of coal and transported 4,852 tons of miscellaneous freight; and for the first 11 months of 1921, 128,020 tons of coal and 4,122 tons of other freight. It serves a large acreage of undeveloped coal land estimated to contain about 200,000,000 tons of coal, and it is anticipated that the movement of coal will increase in volume. The complaint shows that the normal tonnage of coal originated on the Federal Valley ranges from 250,000 to 300,000 tons per year. Thus it is clear that the tonnage transported during 1921 was considerably less than normal. From exhibits submitted by defendant it appears that one of the mines was shut down for 4 months; that during 4 other months no orders were received for cars for that mine; and that on 36 days during the remaining 3 months of the 11 months' period no request was made for any cars. The second mine during a period of 100 days placed no orders, and on the days on which cars were placed the loadings averaged about 50 per cent of the cars furnished. In other words, with the exception of the Black Diamond Company's mine, the mines on the line of the Federal Valley were barely operating. The tonnage transported for the year 1920 was but slightly in excess of that handled during 1921 based on the figures available for the first 11 months of the year. The decreased tonnage handled during 1920, however, was attributable, to a large extent at least, to the inability of defendant to furnish sufficient cars for loading.

The total operating revenues of the Federal Valley for 1920 were \$60,240.29, and operating expenses \$79,067.66, resulting in an operating deficit of \$18,827.37. In that year it was allowed a division of 30 cents prior to August 26, 1920, and 42 cents thereafter. For the first 11 months of 1921, operating revenues aggregated \$62,776.39, and operating expenses \$113,750.01, resulting in an operating deficit of \$50,973.62. Included in the operating expenses for 1921 are items amounting to \$22,554.36 required to be expended for repairs because of a flood and wreck. Complainant contends that, based on the 1920 figures, a division of 72.5 cents would be required to earn a fair return on its investment and to cover all expenses and necessary items for additions and betterments. At the further hearing it was shown that, based on the 1921 figures for the first 11 months of the year, a division of 81.7 cents would pay only the operating expenses and all fixed charges. Exhibits of record show that the cost to the com-

plainant for transporting all of the freight in 1920 was 3.28 cents per ton per mile as compared with a revenue of 2.5 cents per ton per mile. This latter figure, of course, reflects only four months of the increased earnings effective August 26, 1920.

Defendant compared the divisions accorded the Federal Valley with divisions received by other short lines. In addition to supplying all of the coal cars, it hauls 90 per cent of the empties from Toledo to Corning, 190 miles, where they are assembled into mine trains and transported 5.4 miles to the Federal Valley tracks at Palos. At that point they are picked up by the Federal Valley and are carried to the mines. On nearly 50 per cent of the coal shipped from the Federal Valley mines during the last four months of 1920 the defendant furnished all the equipment, hauled the empty cars to Palos, and delivered the loaded cars to destinations on its line. A large portion of the tonnage also moves through the Toledo gateway to Michigan destinations. It was testified that the divisions accruing to the Michigan lines have for years been fixed on a group percentage basis, which allows the defendant a fixed percentage of the through charge to points beyond Toledo. Therefore, whatever division is allowed complainant must come out of the proportion of the through rates allotted to the defendant. Apparently no car-hire charges of any kind are paid by the Federal Valley for the use of defendant's cars.

In *New England Divisions*, 66 I. C. C., 196, at page 199, we said that—

the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and that included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier.

The fact that the Federal Valley has been operating at a deficit does not of itself prove that it is fairly entitled to increased divisions, and still less when it is coupled with the fact that the coal tonnage from the mines located on its line has been far below normal. The record is not sufficient to enable us to compare the amount and cost of the service rendered in the joint traffic by the complainant and by the defendant, respectively, to say nothing of other participating carriers; nor can we determine whether or not an increase in the Federal Valley's divisions would compel the defendant to carry the traffic at less than the actual out-of-pocket cost. The information which has been furnished does not, in short, make possible adequate consideration of the various factors which paragraph (6) of section 15 of the interstate commerce act requires us to consider in fixing divisions.

Upon the record we find that the divisions of interstate joint rates on bituminous coal now accorded the Federal Valley Railroad Company have not been shown to have been or to be unjust, unreasonable, inequitable, or otherwise unlawful. The complaint will be dismissed.

MEYER, Commissioner, concurring:

I concur in the majority report. It is inconceivable that during a period of abnormally low coal traffic an emergency public interest exists which requires us to grant to an industrial carrier approximately 16 miles long, whose chief traffic is coal owned by the owners of the railroad, whose only agency station is served by a trunk line, which performs no passenger service, and whose rate-making value is unknown, increased divisions without any showing of the effect of such an order upon the road's connections and without a showing of the transportation needs of the community served, or the alternative facilities available to meet them. This seems especially improbable when the industrial carrier, as in this case, has been relieved of all car hire, although it uses foreign equipment exclusively, has received its proportionate share of the increases in through rates authorized to meet increased operating expenses, and is receiving divisions comparing favorably with those accorded other short lines under similar circumstances in the same territory.

McCHORD, Chairman, dissenting:

This case clearly calls for the exercise on our part of the increased power over divisions which the Congress has conferred upon us.

The record reveals the amount of revenue needed by the Federal Valley Railroad Company to pay its operating expenses, taxes, and a fair return on its railway property held for and used in the service of transportation. The road is efficiently and economically operated. It is a line upon which, under normal conditions, 250,000 to 300,000 tons of coal per year originate. It serves a territory with a potential coal production of 200,000,000 tons. The combined population of the townships through which it runs is 9,500. The importance to the public of the transportation service rendered by the road is shown by these facts and by the action of the Public Utilities Commission of Ohio in requiring that it be operated as a common carrier.

The situation of this road as shown in the majority report is one which calls for remedial action upon our part in the exercise of our comprehensive power to prescribe just, reasonable, and equitable divisions. The greater portion of its revenue is derived from traffic interchanged with its connections, and consequently it must rely upon the earnings derived from this source to enable it to continue in

operation. We have power under paragraph (6) of section 15 of the interstate commerce act to make at least a temporary adjustment in the divisions of the joint rates so as to make the compensation allowed the Federal Valley more nearly equal to the cost of rendering the service. In *New England Divisions*, 66 I. C. C., 196, 204, we said:

Upon further consideration we are of the opinion that in a case involving divisions we may, when the public interest so requires, grant immediate relief subject to later readjustments, as we have done in cases involving general increases or reductions in rates. Otherwise, we shall fail to do substantial justice. The act requires a practical administration, and prompt action where that is necessary in the public interest.

Complainant in the instant case is justly entitled upon the facts shown upon this record to immediate relief. The failure to afford such relief is in my opinion a failure to act constructively in the exercise of those powers which were given us for the very purpose of fostering and protecting the weak roads and preserving their transportation facilities.

68 I. C. C.

No. 11426.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.
v.
NEW ORLEANS GREAT NORTHERN RAILROAD
COMPANY ET AL.

Submitted November 15, 1921. Decided April 18, 1922.

Contention of complainant carriers that they, rather than defendants, are entitled to provide for and collect a charge for transportation service incident to the dressing in transit of lumber at Jackson and Brookhaven, Miss., not sustained. Principles announced to settle the controversy.

R. V. Fletcher and A. P. Humburg for complainants.

Charles D. Drayton for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

CAMPBELL, *Commissioner*:

No exceptions were filed to the report proposed by the examiner.

Numerous carload shipments of lumber originate at points on the New Orleans Great Northern, Gulf & Ship Island, and Mississippi Central Railroads, and move via those lines, respectively, to Jackson and Brookhaven, Miss., are there delivered to the Illinois Central Railroad,¹ switched by it to local planing mills for dressing, and later forwarded via that road and its northern connections to points outside the State on joint through rates from points of origin to final destinations, plus a charge for the transportation service incident to the dressing in transit. This latter service is performed entirely by the Illinois Central, except that the initial lines do some minor clerical work which they do not perform when shipments move through without transit. The transit charge is published both by the initial lines and by the Illinois Central, and the tariffs in both instances provide that the publishing carrier shall collect the charge. Since the termination of Federal control the initial lines have collected and retained the charge. They hold the traffic on their rails until the transit charges are paid. The charges being paid to the initial lines, the Illinois Central makes no additional collection, but yields to the situation under protest. It here complains of the action of the initial lines and asks that we settle the controversy.

¹ Includes the Yazoo & Mississippi Valley.

The Illinois Central contends that as it performs practically all the transportation service incident to the transit arrangement it is entitled to control, publish, collect, and retain the transit charge, but it is willing to allow the initial lines switching and per diem reclaims and to reimburse them for necessary clerical expenses. The initial lines contend that as they originate the traffic they alone have the right, if they so elect, to determine whether or not there shall be a transit charge and, if so, what it shall be, and that they are entitled to publish the charge and to collect it. They are willing, however, to pay the Illinois Central a proper compensation for the service it performs. In other words, it is the contention of the initial lines that they have the right to be the principals in this arrangement and to employ the Illinois Central merely to do the work for a stipulated sum. Reparation is asked by complainant to cover the transit charges collected by the initial lines from March 1 to April 23, 1920, the date of the filing of the complaint. The 2-cent transit charge involved, since increased to 2.5 cents under the general increases of 1920, was approved in *Mercantile Lumber Co. v. I. C. R. R. Co.*, 53 I. C. C., 663, and 59 I. C. C., 128.

The carriers' rights and responsibilities in connection with this matter are joint, and all parties to the joint through rates are entitled to a voice when questions arise as to whether there shall be a transit arrangement, whether a charge shall be made therefor, or what the charge, if any, shall be. If there be disagreement the matter may again be submitted to us for determination. No action should be taken that would put a burden on the shippers pending settlement. The charge should be published as a joint charge, either in the tariff naming the joint through rates or in a joint transit tariff specifically referred to in the tariff naming the joint through rates. It should be collected by the carrier that can do so with the greater efficiency and convenience. It should be divided in proportion to the expenses incurred by each line. The transit charges on the past shipments involved should be so divided.

The complaint will be dismissed.

No. 12535.¹

FAIRMONT CREAMERY COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY, ET AL.

Submitted January 27, 1922. Decided April 15, 1922.

Rates on gas oil and fuel oil from midcontinent fields in Kansas and Oklahoma, and from Joplin and Kansas City, Mo., to Crete, Hastings, and Grand Island, Nebr., and Sioux City, Iowa, found unreasonable, and reasonable rates prescribed for the future. Reparation awarded.

M. S. Hartman, A. W. Borden, and E. H. Vieregg for complainants.

J. P. Haynes and P. R. Wigton for Interstate Oil Company.

Thorne & Jackson, T. M. Hanrahan, and F. G. Stadle for Western Petroleum Refiners Association, interveners.

John F. Finerty, J. M. Souby, and John C. Brooke for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

These cases, though separately heard, present similar issues and a single proposed report covering them was prepared and served upon the parties. Exceptions were filed by the director general, as agent, and the cases were orally argued.

Complainant in No. 12535, the Fairmont Creamery Company, a corporation engaged in the manufacture of dairy products, with main office at Omaha, Nebr., alleges that defendants charged unreasonable rates for the transportation of fuel oil from points in Kansas and Oklahoma, known as Groups A and B, respectively, to its manufacturing plants at Crete and Grand Island, Nebr., and Sioux City, Iowa; from Omaha and South Omaha, Nebr., to Crete and Grand Island; and from Omaha to Sioux City. Shipments were made in tank cars and cover the period from March 1, 1918, to

¹This report also embraces No. 12535 (Sub-No. 1), Hastings Gas Company et al. v. Atchison, Topeka & Santa Fe Railway Company et al.; and No. 12554, Interstate Oil Company v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.

February 5, 1921, inclusive. Reparation and rates for the future are asked. No evidence was introduced as to the reasonableness of rates or showing the movement of shipments from Omaha to Sioux City, and upon brief the complaint as to rates between these points was withdrawn and will not be further considered herein.

Complainants in No. 12535 (Sub-No. 1) are the Hastings Gas Company and the Grand Island Gas Company, public service corporations at Hastings, Nebr., and Grand Island, respectively, and the Fairmont Creamery Company. These complainants allege that defendants charged unreasonable rates for the transportation of gas oil, in tank cars, from points in Missouri, Kansas, and Oklahoma within Groups A and B, to Hastings and Grand Island, and from Kansas City, Mo., to Grand Island, on shipments made by the public service corporations, and for the transportation of fuel oil, in tank cars, from Kansas City and Joplin, Mo., to Crete and Grand Island, on shipments made by the creamery company; and that the rates on fuel oil and gas oil from all these points of origin to the Nebraska destinations named and to Sioux City are unreasonable. This complaint brings in issue only the rates effective since the termination of Federal control. Reparation and rates for the future are asked. The evidence discloses no shipments from Missouri points to Sioux City.

In these complaints the Western Petroleum Refiners Association, a voluntary association whose members are engaged in the production, refining, and sale of petroleum and its products, intervened in behalf of complainants, its interest being in rates for the future.

Complainant in No. 12554, the Interstate Oil Company, a corporation engaged at Sioux City in buying and selling petroleum products, by complaint, as amended, alleges that the rates charged by defendants on 13 carload shipments of fuel oil from points in Kansas Group 2 and Oklahoma Group 3 to Sioux City, during the period from May 2, 1918, to June 15, 1920, inclusive, were unreasonable in violation of the interstate commerce and Federal control acts. Groups 2 and 3 are in the main the same as Groups A and B, respectively. Reparation only is asked.

Rates will be stated in cents per 100 pounds. Reference herein to the general rate increase of 1918 is to be understood as including the readjustment in rates on oil to the flat basis of 4.5 cents over the rates of June 24, 1918.

No evidence was submitted by complainants or intervener bearing directly upon the rates from Omaha and South Omaha to Crete and Grand Island. Defendants show that on petroleum oils to Grand Island prior to August 1, 1918, fifth-class rates applied, and that

since that date, due to the 4.5-cent flat increase over the rates in effect prior to June 25, 1918, which then became effective, the rates have been slightly lower than fifth class. The record is too meager to afford a basis for a finding as to the reasonableness of the rates from Omaha and South Omaha to Crete and Grand Island, and these rates will not be further considered herein.

In *Midcontinent Oil Rates*, 36 I. C. C., 109, hereinafter referred to as the *Midcontinent case*, we considered for the most part rates on refined, or higher grade, petroleum oils, such as naphtha, gasoline, and kerosene, from points in the midcontinent field in Kansas and Oklahoma to points in Illinois, Iowa, Nebraska, Utah, and other States; nevertheless, the rates on lower grade products, such as asphalt, road oil, fuel oil, and petroleum tailings, were also given consideration; and, having determined the reasonable rates on refined oils to St. Louis, Mo., and Chicago, Ill., among other points, we found that lower grade oils from all midcontinent refineries to these two destinations should take rates 5 cents lower than those found reasonable on refined oils to the same destinations. We there said:

What we have found with respect to rates on the lower grades of oil when shipped to St. Louis and Chicago should be applied in just relationship to other points, although not specifically referred to in this proceeding.

That report does not specifically name gas oil as belonging in the lower grades of petroleum products. The present record shows that, regardless of technological differences between fuel oil and gas oil, in some industries one may be used in place of the other; that both are midway products in the refining of petroleum; and that both are of low value. The record here, in part, supports what was said in *Shaffer Oil & Refining Co. v. Director General*, 60 I. C. C., 110, one of a number of cases in which we have prescribed on low-grade oils, including gas oil, a differential of 5 cents under the rate on the higher grade oils:

Gas oil is a petroleum distillate which is run off after the more volatile and higher grade oils, such as gasoline, naphtha, and kerosene, have been extracted from the crude oil. After gas oil has been removed, a large percentage of the residuum is fuel oil. Gas, fuel, and crude oils are of higher specific gravity and sell for much less than the higher grade oils. For tariff purposes the more volatile oils are estimated to weigh 6.6 pounds to the gallon, while gas, fuel, and crude oils are estimated at 7.4 pounds. When transported in tank cars the charges are based on the estimated weights for the gallonage capacities of the cars. In a number of cases we have fixed a differential on crude, gas, and fuel oils of 5 cents under the rates applicable on the higher grade oils.

It is unnecessary to set forth the rates paid by complainants, for, admittedly, some of these were not applicable and resulted in undercharges and overcharges. It will suffice to state the rates applicable
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on oil, refined, fuel, and gas, showing all changes during the period considered:

		From Group A (Kansas).		From Group B (Oklahoma).		From Kansas City, Mo.	
		Short- line mileage.	Rate.	Short- line mileage.	Rate.	Short- line mileage.	Rate.
To Crete, Nebr.:		<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
June 24, 1918.....		354	20.3	455	29.3	204	19
June 25, 1918.....		354	33	455	30.5	204	24
.....		354	31	455	34	204	22.5
.....		354	42	455	46	204	31.5
To		437	.....	538	.....	286	20
.....		437	45	538	49	286	37.5
.....		437	40.5	538	43.5	286	34.5
.....		437	54.5	538	58.5	286	46.5
To		413	36.1	514	39.1	263	26
.....		413	45	514	49	263	35
.....		413	40.5	514	43.5	263	32.5
.....		413	54.5	514	58.5	263	44
To		438	25	539	28	288	20
.....		438	25	539	28	288	20
May 3, 1918.....		438	23.4	539	26.4	288	20
.....		438	31.5	539	35	288	26
June 25, 1918.....		438	29.5	539	32.5	288	24.5
July 25, 1918.....		438	28	539	31	288	24.5
.....		438	29.5	539	32.5	288	24.5
June 3, 1920.....		438	28	539	30.5	288	24.5
.....		438	40	539	44	288	33
Aug. 25, 1920.....		438	26	539	41	288	33

¹ Effective August 14, 1918.

² Group rates shown are from Groups 2 and 3: Rates from Groups A and B apply only via C., St. P., M. & O. Ry., and are substantially the same as from Groups 2 and 3, respectively.

³ Rate on fuel oil.

⁴ Rate on fuel, gas, and crude oils.

The only Missouri points of origin directly involved are Kansas City and Joplin, and the rates from Joplin were, and are, the same as rates from Group-A or Kansas points of origin.

In *Fairmont Creamery Co. v. A., T. & S. F. Ry. Co.*, 43 I. C. C., 515, we prescribed rates on fuel oil from Kansas and Oklahoma groups to Omaha, 5 cents less than the rates on refined oil, that is, 15 and 18 cents respectively, and denied relief under the fourth section of the act. The latter rates, therefore, became the lawful rates to Council Bluffs, Iowa. The fifth-class rate from Council Bluffs to Sioux City at that time was 8.4 cents, and the carriers fixed rates on fuel oil to the latter point upon basis of the Council Bluffs combination rather than in accord with the findings in the *Midcontinent case*. Rates so made to Sioux City were less than the rates on refined oil and have been shown above.

The tank cars used for the shipments in No. 12585 and its sub-number varied in capacity from about 8,000 gallons to about 10,000 gallons. Taking the rate on fuel oil from Kansas Group-A points to Crete prior to the general increase of 1918, for illustration, the

smallest revenue, \$161.33, seems to have accrued upon a shipment forwarded June 13, 1918, from Augusta, Kans. This, at the applicable rate of 26.3 cents, indicates an estimated weight of 61,342 pounds, or 8,290 gallons of fuel oil. Using the average short-line distance from Kansas points to Crete, 354 miles (the actual short line from Augusta to Crete being 309 miles), this car earned a revenue of 45.5 cents per car-mile. Had this same car been loaded with higher grade oils, such as gasoline, the earnings per car would have been \$143.90, and the car-mile earnings 40.6 cents, or less than on the lower grade oils. A rate of 15 cents, the basis for which is hereinafter described, would have yielded earnings per car of \$92.01, or 25.99 cents per car-mile, even at the average short-line distance of 354 miles from the entire group. This illustration applies to the lowest rate applicable from Kansas fields to Crete during the period considered and on the lightest carload shown, and the earnings indicated are considerably below the average earnings. Extended examinations of similar shipments from the midcontinent fields and from Kansas City to Crete, Grand Island, Hastings, and Sioux City do not show such different results as to demand modification of the conclusion suggested by these figures.

Complainants contend not only for a differential under the rates on refined oils as applied in the *Midcontinent case*, but also that the rates on refined oils to the destinations here considered are too high and hence that the application of this differential alone would result in rates on low-grade oils higher than reasonable maximum rates. They attempt to show what would be reasonable maximum rates on the latter from the midcontinent fields by constructing rates on basis of the ton-mile earnings yielded by the rates prescribed by us, as subsequently increased, on low-grade oils from the Kansas and Oklahoma midcontinent groups to St. Louis. It is pointed out that in every case except from the Kansas group to Crete, the average distances to the destinations here considered are greater than the average distances from the origin groups to St. Louis, which would ordinarily entitle these destinations to rates yielding lower ton-mile earnings than the rate to St. Louis. The rates so constructed and offered as reasonable maxima for present application are, from the Kansas and Oklahoma groups, respectively, as follows: To Crete, 24.6 and 27.6 cents; to Hastings, 29.6 and 32 cents; to Grand Island, 32.2 and 34.4 cents; and to Sioux City, 29.9 and 32.5 cents.

Defendants correctly state that the issue is whether the fuel-oil and gas-oil rates are reasonable, rather than whether they should be a specific amount under the rates on refined oils. Upon argument they disclaim any intention of denying that there should be a spread

between the rates on fuel oil and gas oil and the rates on refined oils. But they urge that we have not passed upon the rates on refined oils to Crete, Hastings, or Grand Island, and that these rates, even as applied on fuel oil and gas oil, are depressed. They further contend that the rates from the midcontinent field, found by us in the *Midcontinent case* to be reasonable, including the rate to Sioux City, as subsequently increased, are not now reasonable maximum rates, on account of increased transportation costs, increase in value of fuel oil and gas oil, and increase in average length of hauls due to increase in the size of the origin groups.

The increase in transportation costs has been recognized in the general increases imposed by the director general in 1918 and those authorized by us in 1920. While the value of fuel and gas oils rose considerably during the war, exhibits of record indicate that they are now back to the pre-war values. Complainants point out that the prices of refined oils fluctuated similarly during the period here considered, although the rates thereon remained the same except for the general increases; and they contend that rates can not be made to vary with the fluctuations of the market value of a product. The increase in length of hauls from the Kansas and Oklahoma groups, due to enlargement of the groups, is shown by defendants as an average increase of 42 miles. At the time the *Midcontinent case* was decided, the Kansas group included 10 and the Oklahoma group 16 points of origin. At time of hearing herein the Kansas group included 35 and the Oklahoma group 23 points of origin. The evidence is not sufficient to justify the conclusion that on account of this enlargement of the groups the rates found reasonable in the *Midcontinent case* have become less than reasonable. It is to be observed that defendants' distances are arrived at by adding to the average distances from Kansas and Oklahoma points to Kansas City the average distances from Kansas City to the various destinations. Our criticism in the *Midcontinent case*, page 118, of this method of arriving at the distances is applicable here. Thus, defendants show short-line distances via Kansas City to Grand Island of 474 miles from Eldorado, Kans., and 530 miles from Arkansas City, Kans., while we find that the short-line distances from these points via Topeka are 355 and 412 miles, respectively. It is also noted that in computing these average distances defendants have used some routes which are obviously unreasonably long, thus impairing to some extent the value of the comparisons. The record shows that the volume of the traffic has been increasing for a number of years, which would tend toward lower rates.

Defendants contrast the relation of the commodity rates assailed to the corresponding fifth-class rates with the relation of rates on

the same commodities to fifth-class rates from refining points in Ohio, Pennsylvania, New York, and New Jersey, to points in central territory for approximately equal hauls, and show that the latter are a considerably higher percentage of the class rates. In *Western Trunk Line Rate Increases*, 43 I. C. C., 481, 489, we commented upon the inconclusive character of such comparisons, and in *Decker & Sons v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 547, 551, we said:

So many elements enter into the determination of a commodity rate that it can not be said that a commodity rate must always bear a fixed relation to the corresponding class rate, even as between competing points.

Making due allowance for the differences in transportation conditions, it is significant that the rates cited in these comparisons are for equal hauls approximately only 50 per cent of those assailed from the midcontinent field and Kansas City to Crete, Hastings, and Grand Island.

In the *Midcontinent case* we fixed rates on refined oils of 20 and 23 cents to Omaha, from the Kansas and Oklahoma groups, respectively, for average respective hauls of 344 and 449 miles, and said:

The rate to Omaha is also applied to Lincoln, Fremont, and other Nebraska points, and the relationship with respect to those points should be preserved.

Lincoln and Fremont are interior points, the average distances to the latter being 380 and 485 miles from the Kansas and Oklahoma groups, respectively. The rates to Omaha, since the general increases of 1920, are 33 and 37 cents. To Crete, from the Kansas and Oklahoma groups, the rates on refined and low-grade oils are 42 and 46 cents for average hauls shown of record as 366 and 467 miles. Crete is but 20 miles beyond Lincoln. No reason appears why Crete should take higher rates than Omaha, Fremont, and Lincoln, or why a differential in favor of low-grade oils, as prescribed in the *Midcontinent case* to St. Louis, of 5 cents prior to August 26, 1920, and 6.5 cents on and after that date, should not obtain in the rates to Crete. This would result in rates for the future to Crete of 26.5 and 30.5 cents from the Kansas and Oklahoma groups, respectively.

In the *Midcontinent case* we fixed rates on refined oils to Sioux City of 25 and 28 cents from the Kansas and Oklahoma groups, respectively, for average hauls of 445 and 550 miles. The application of the general increases results in present rates of 40 and 44 cents. The present refined-oil rates from these respective groups are, to both Hastings and Grand Island, 54.5 and 58.5 cents for average hauls shown of record as 440 and 541 miles to the former and 479 and 580 miles to the latter. No substantial difference in the transportation conditions in connection with traffic to Hastings and Grand Island as compared with traffic to Sioux City is pointed out, except

that the volume of oil traffic to the latter point is somewhat greater. The record herein does not disclose adequate justification for higher rates to Hastings and Grand Island than would result to Sioux City from the application of the general increases nor for failure to maintain to all three points a differential in favor of low-grade oils of 5 cents prior to August 26, 1920, and 6.5 cents on and after that date. This would result in rates for the future to Sioux City, Hastings, and Grand Island of 33.5 cents from the Kansas group and 37.5 cents from the Oklahoma group.

The following table sets forth the rates on fuel and gas oils from Kansas City to the destinations here considered, effective August 26, 1920, with the earnings per car and per car-mile, based upon a car of 8,000 gallons capacity; also the rates which would result if the differential for low-grade oils, as subsequently increased to 6.5 cents, were applied. The distances are taken from exhibits of record:

To—	Average distance.	Rate.	Earnings per car.	Earnings per car-mile.	Rate with differential applied.
	Miles.	Cents.		Cents.	Cents.
Crete.....	211	31.5	\$186.48	88.3	25
Hastings.....	284	44	260.48	91.7	37.5
Grand Island.....	291	46.5	275.28	94.5	40
Sioux City.....	297	33	195.36	66.5	26.5

The earnings produced under the rates applied were obviously excessive, and even the application of the differential would result in excessive rates to Hastings and Grand Island. Rates of 30 cents to the latter points would produce, on a car of 8,000 gallons capacity, earnings of \$177.60 per car, and 62.5 and 61 cents per car-mile, respectively. The record as to these particular rates is not so complete as with respect to the rates from the midcontinent fields, but it is clear that the earnings under the rates suggested are ample for the service.

We find that the rates assailed on fuel oil and gas oil, in tank-car loads, are and for the future will be unjust and unreasonable to the extent that they exceed or may exceed, from points in the midcontinent oil field in Kansas, and from Joplin, Mo., on the one hand, and from points in the midcontinent oil field in Oklahoma, on the other hand, the following rates, respectively: To Crete, 26.5 and 30.5 cents; to Hastings, Grand Island, and Sioux City, 33.5 and 37.5 cents; and from Kansas City, Mo., to Crete, 25 cents; to Hastings and Grand Island, 30 cents; and to Sioux City, 26.5 cents. We further find that the rates on fuel oil and gas oil were unjust and unreasonable to the extent that they exceeded the following rates during the periods specified:

	Prior to June 25, 1918.	June 25, 1918, to Feb. 29, 1920.	Mar. 1, 1920, to Aug. 25, 1920.	On and after Aug. 26, 1920.
<i>Fuel oil.</i>				
To Crete from—	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Kansas City, Mo.....			18.5	25
Kansas group.....	15	19.5	19.5	26.5
Joplin, Mo.....			19.5	26.5
Oklahoma group.....	18	22.5	22.5	30.5
To Grand Island from—				
Kansas City, Mo.....			22	30
Kansas group.....	20	24.5	24.5	33.5
Joplin, Mo.....			24.5	33.5
Oklahoma group.....	23	27.5	27.5	37.5
To Sioux City from—				
Kansas group.....	20	24.5	24.5	33.5
Oklahoma group.....	23	27.5	27.5	37.5
<i>Gas oil.</i>				
To Grand Island from—				
Kansas City, Mo.....			22	30
Kansas group.....			24.5	33.5
Joplin, Mo.....			24.5	33.5
Oklahoma group.....			27.5	37.5
To Hastings from—				
Kansas group.....			24.5	33.5
Joplin, Mo.....			24.5	33.5
Oklahoma group.....			27.5	37.5

It is contended by the director general that even though the rates charged were unreasonable, no reparation against him can be awarded in No. 12554, because during the period May 2, 1918, to August 22, 1919, when 11 of the shipments moved, complainant Interstate Oil Company, the corporation, did not exist, and he relies upon section 3477 of United States Revised Statutes, forbidding assignments of claims against the United States excepting in circumstances not here shown. At the time these 11 shipments moved, Elias Rizk and Shaker Rizk were copartners trading under the name of the Interstate Oil Company at Sioux City, and as such they paid and bore the freight charges thereon. Not until some time in January, 1920, did they incorporate their business under the same title. Complainant corporation took over all obligations and liabilities, and all rights, assets, and claims, of its predecessor, the copartnership; Elias Rizk is president and Shaker Rizk is vice president and secretary of the corporation, and together they own 90 per cent of its capital stock. Thus the Interstate Oil Company has been a going concern from May 2, 1918, to date, having been run by the same natural persons during all this time. In *Seaboard Air Line Ry. v. United States*, decided June 6, 1921, 256 U. S., 655, the Supreme Court held that the statute cited did not prevent the allowance of a claim originally payable to a certain company, the right to which had vested in another corporation formed by the merger of that company and another, since this was not within the evil at which the statute aimed. The court there said:

We cannot believe that Congress intended to discourage, hinder or obstruct the orderly merger or consolidation of corporations as the various states might

authorize for the public interest. There is no probability that the United States could suffer injury in respect of outstanding claims from such union of interests and certainly the result would not be more deleterious than would follow their passing to heirs, devisees, assignees in bankruptcy, or receivers, all of which changes of ownership have been declared without the ambit of the statute. The same principle which required the exceptions heretofore approved applies here.

Following the principle of this case, we find that the transfer of the claim herein from the copartnership to the corporation is not within the inhibition of the statute.

We further find that Elias Rizk and Shaker Rizk and complainant corporations made shipments as described, and paid and bore the charges thereon at rates herein found unreasonable; that complainants have been damaged thereby in the amount of the difference between the charges collected and those which would have accrued at the rates herein found reasonable, and are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice, and any outstanding overcharges and undercharges may be taken into consideration in preparing the statement.

An order for the future will be entered.

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No. 12473.

KEOKUK ELECTRIC COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ARKANSAS CENTRAL
RAILROAD COMPANY, ET AL.

Submitted January 28, 1922. Decided April 15, 1922.

Rates on gas oil, in carloads, from points of origin named in Boyd's tariff I. C. C. No. A-916 to Keokuk, Iowa, found unreasonable and unduly prejudicial. Reasonable and nonprejudicial relationship of rates prescribed for the future and reparation awarded on certain shipments.

Leo E. Golden for complainant.

T. M. Hanrahan for Western Petroleum Refiners' Association, intervener.

John F. Finerty and *Fred W. Heid* for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

BY DIVISION 4:

Exceptions were filed by defendants to the report proposed by the examiner. The case was assigned for oral argument, but the principal grounds for exception having been argued in other proceedings, counsel agreed to submit the case without further argument.

Complainant is a corporation engaged, among other things, in the manufacture and distribution of gas for domestic and commercial use at Keokuk, Iowa. By complaint filed February 25, 1921, as amended, it attacks the rates on gas oil, in carloads, from points of origin named in Agent Boyd's tariff I. C. C. No. A-916, to Keokuk, as unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded or may exceed rates constructed on the basis prescribed in *Hubinger Bros. Co. v. Director General*, 58 I. C. C., 53, for fuel oil, in carloads, from and to the same points, as hereinafter explained. We are asked to establish reasonable rates for the future, and to award reparation on shipments moving since December 24, 1917, including those moving during the pendency of this proceeding. The Western Petroleum Refiners' Association inter-

vened at the hearing in support of the complaint. Rates are stated herein in cents per 100 pounds.

The points of origin are, generally speaking, divided into three groups: Group 1 includes Kansas City and St. Joseph, Mo., and a few near-by points in Kansas and Missouri; Group 2 includes points in the midcontinent oil field in Kansas, and Joplin, Mo.; and Group 3 includes points in the midcontinent oil field in Oklahoma. Rates are also provided from certain other points of origin in Oklahoma and from Fort Smith, Ark., which are arbitraries over the Group-3 rates.

In *Midcontinent Oil Rates*, 36 I. C. C., 109, called herein the *Midcontinent case*, we found that reasonable maximum rates on refined oils, hereinafter for convenience called gasoline, from the midcontinent field, would be 20 cents to St. Louis, Mo., 21 cents to Keokuk, and 25 cents to Chicago, Ill., and fixed rates on low-grade petroleum products, such as fuel oil, road oil, asphalt, and petroleum tailings, to St. Louis and Chicago, 5 cents under the rates on gasoline to those points, and said:

What we have found with respect to the rates on the lower grades of oil when shipped to St. Louis and Chicago should apply in just relationship to other points although not specifically referred to in this proceeding.

And in *Fairmont Creamery Co. v. Director General*, 68 I. C. C., 507, decided contemporaneously herewith, we discussed the relationship which should exist between gas oil, fuel oil, and the higher grade oils, and prescribed the same rates for gas oil and fuel oil.

Prior to February 28, 1916, the effective date of the rates published in compliance with the decision in the *Midcontinent case*, rates on the low grades of oil, including fuel and gas oils, to Keokuk from Groups 2 and 3 were 5.5 and 7 cents, respectively, under the rates on gasoline. Apparently ignoring the spirit of the language of the *Midcontinent case*, the carriers on that date placed the low-grade oils on the same basis as gasoline. From that time until October 12, 1920, the rates on the low-grade oils to Keokuk remained on the gasoline basis, which, on August 26, 1920, became 29 cents from Group 1, and 34.5 cents from Groups 2 and 3. In the *Hubinger case*, *supra*, decided June 18, 1920, we held that the rates on fuel oil, in carloads, to Keokuk from the territory of origin here considered should not exceed rates 5 cents under the contemporaneous rates on gasoline, in carloads, from and to the same points, and that they should be the same as the rates on like traffic to St. Louis from Group 1, and not more than 1 cent in excess of the St. Louis rates from Groups 2 and 3. Thereupon the carriers on October 12, 1920,

reduced the rates on fuel oil to Keokuk to 22.5 cents from Group 1, and to 27.5 cents from Groups 2 and 3.

Effective March 18, 1921, the rates to Keokuk on other low-grade oils, including gas oil, were reduced to 33 cents from Groups 2 and 3, no change being made in the rates from Group 1. The present rates on gasoline to St. Louis are 29 cents from Group 1 and 33 cents from Groups 2 and 3, or the same as the rates on gas oil to Keokuk; and on the lower grades of oil, 22.5 cents from Group 1 and 26.5 cents from Groups 2 and 3. It will thus be observed that the rates on gas oil and fuel oil to St. Louis are 6.5 cents under the gasoline rates; that the present fuel-oil rates to Keokuk are lower than the gasoline rates by 6.5 cents from Group 1 and 7 cents from Groups 2 and 3; and that the rates on gas oil to Keokuk are on the gasoline basis from Group 1 and 1.5 cents under that basis from Groups 2 and 3.

For the purposes of assessing freight charges the estimated weight of gas oil is 7.4 pounds and of gasoline 6.6 pounds per gallon, and due to this difference in weights the actual earnings per car and per car-mile on the same gallonage to Keokuk are greater on gas oil than on gasoline. Thus the car-mile earnings on an 8,000-gallon car at the present rates from Group 3 would be 33.9 cents on gasoline and 36.3 cents on gas oil. Rates on fuel oil would earn 30.3 cents.

Comparisons of pre-war and subsequent prices of petroleum products, increased average distances over those found in the *Midcontinent case* due to the establishment of refineries at additional points, various rate and revenue comparisons, heavy empty-return movement of tank cars, increased operating costs since the *Midcontinent case* was decided, and retroactive application of wage increases in 1918, are among the more important points stressed by the defendants as justification for the rates charged. These matters were discussed in *Fairmont Creamery Co. v. Director General*, *supra*, and the same conclusions are applicable here.

Defendants compare the assailed rates with the rates on low-grade oils from St. Louis and Chicago to points in Missouri, Nebraska, Iowa, and Illinois; from Chicago to Omaha, Nebr.; from Casper, Wyo., to points in Iowa; from eastern Kentucky fields to Chicago and points in Ohio; and between points in central and trunk-line territories. Distance considered, these rates as a rule are lower than the rates under attack and in most if not all instances they apply alike on gas and fuel oils. They also show that the rates applying on gas oil within the States of Oklahoma, Kansas, and Texas are 2.5 cents higher than those on other low-grade oils;

but this fact is not persuasive, inasmuch as gas oil and fuel oil generally take the same rates interstate from the groups of origin here considered to western trunk-line territory. Defendants suggest that gas oil should take higher rates than fuel oil because of its greater value. According to complainant the refinery prices of gas and fuel oils on June 1, 1921, were 1.875 cents and 1.25 cents per gallon, respectively. This difference in value is too small to be used alone as a basis for distinguishing between the rates on the two kinds of oil.

In a number of cases we have accorded the same rates on gas oil as applied on fuel and other low-grade oils. *Pure Oil Co. v. Director General*, 56 I. C. C., 218; *Shaffer Oil & Refining Co. v. Director General*, 60 I. C. C., 110; *Emerson-Brantingham Co. v. Director General*, 62 I. C. C., 18; *Fairmont Creamery Co. v. Director General*, *supra*. The present record presents no basis for a finding that the rates on gas oil from the territory of origin involved to Keokuk should be higher than those on fuel oil.

We find that the rates assailed on gas oil prior to August 26, 1920, were unreasonable and unduly prejudicial to the extent that they exceeded rates 5 cents less than the contemporaneous rates on gasoline and other refined oils, in carloads, from and to the same points, and to the extent that they exceeded, from Group 1, the contemporaneous rates on gas oil, in carloads, from the same points to St. Louis, and by more than 1 cent from Groups 2 and 3, the contemporaneous rates on gas oil, in carloads, from the same groups to St. Louis; that on and after August 26, 1920, they were, are, and for the future will be unreasonable and unduly prejudicial to the extent that they exceeded, exceed, or may exceed the rates hereinabove found reasonable and nonprejudicial prior to August 26, 1920, increased pursuant to *Increased Rates, 1920*, 58 I. C. C., 220.

Most of the shipments on which reparation is sought were purchased under contracts providing that the price of the oil included the freight charges at the rate in force at time of sale, and that in the event of an increase in the freight rate or the estimated weight per gallon, the buyer would protect the seller, and vice versa. The freight charges on the shipments were paid by complainant, but were deducted from the invoice price of the oil. Complainant's contention seems to be that inasmuch as the price of the oil included the cost of transportation, it bore the freight charges, notwithstanding they were deducted as such on the invoice, complainant remitting for the remainder. This contention can not be sustained for reasons discussed in the *Hubinger case*, *supra*, which involved a similar situation, and in other cases. Certain of the shipments were

purchased in open market and as to these complainant paid and bore the freight charges.

We find that complainant made shipments as described and paid and bore the charges on such as were purchased in the open market; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. As the amount of reparation can not be determined from the record complainant should comply with Rule V of the Rules of Practice.

An order for the future will be entered.

68 I. O. O.

No. 12663.

MIDLAND LINSEED PRODUCTS COMPANY

v.

DIRECTOR GENERAL, AS AGENT, WEST SHORE
RAILROAD COMPANY, ET AL.

Submitted January 28, 1922. Decided April 20, 1922.

Rates on linseed oil, in carloads, from Edgewater (Undercliff), N. J., to various points in official territory found unreasonable. Reparation awarded and measure of reasonable maximum rates prescribed for the future.

E. A. Hodgkinson for complainant.

Marion B. Pierce for defendants.

John F. Finerty and *Thomas M. Woodward* for director general, as agent.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

By DIVISION 4:

Exceptions to the examiner's proposed report were filed by the defendant and the case was orally argued before us.

Complainant is a corporation engaged in the manufacture of linseed oil, oil cake, and oil meal at Edgewater, known as and hereinafter referred to as Undercliff, N. J. By complaint, filed February 28, 1921, it alleges that the fifth-class rates charged for the transportation, subsequent to January 1, 1917, of numerous carloads of linseed oil from Undercliff to specified points in official territory were and are unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded and exceed the rates contemporaneously maintained on cottonseed and other oils, in carloads, from and to the same points. It seeks reparation and the establishment of just and reasonable rates for the future. Rates are stated throughout this report in cents per 100 pounds.

Linseed oil, a product of flaxseed, is used in the manufacture of linoleum, paints, varnishes, inks, and soap, and as an adulterant of other oils. It competes with other vegetable oils such as cottonseed, copra, and soya bean, in soap making, and with fish oil and soya-bean oil in the making of linoleum, paints, and varnishes. Like the other oils referred to, linseed oil is usually shipped in tank cars, and in other respects has similar transportation characteristics. During

the years 1917 to 1921, the values per pound of the oils ranged as follows: Linseed, from 8.5 to 28.7 cents; cottonseed, from 6.25 to 28 cents; soya bean, from 8 to 20 cents; and copra, from 11 to 21 cents. During the same period the production in this country ranged, in pounds, as follows: Linseed, from 375,452,000 to 485,271,517; cottonseed, from 1,141,389,742 to 1,430,002,962; soya bean, from 42,074,000 to 188,162,575; and copra, from 131,218,408 to 341,235,000. Notwithstanding the similarity between all of these oils, the fifth-class rates are, generally speaking, applied on linseed oil in official territory, while the other vegetable oils and fish oils take commodity rates not in excess of sixth class. The latter rates were established from and to the points involved: On copra and palm oils in April, 1909; on fish and whale oils in August, 1912; on copra oil in 1913; on cottonseed oil in May, 1916; on palm-kernel oil in February, 1919; and on soya-bean and peanut oils in May, 1921. From New York rate points, including Undercliff, to points in Oregon, Idaho, Montana, Utah, and Washington, and from New York to Norfolk, Va., Boston, Mass., and Portland, Me., linseed oil enjoys the same commodity rate as cottonseed, soya-bean, and the other vegetable oils. Commodity rates less than fifth class are also maintained on linseed oil from Amsterdam and Buffalo, N. Y., to Norfolk and Richmond, Va., and from Undercliff to Albany, Mechanicville, Schenectady, and Waterford, N. Y.

The shipments concerned moved over the defendant carriers' lines and charges were collected at the applicable rates. The rates from Undercliff to representative destinations involved, as of June 25, 1918, and the earnings thereunder, on linseed oil and on copra and other vegetable oils, were as follows:

From Undercliff to—	Distance.	Rate.	Car-mile earnings. ¹	Ton-mile earnings.
	Miles.	Cents.	Cents.	Mills.
Pittsburgh, Pa.:				
Linseed oil.....	448	27	22.7	12
Vegetable oils.....	448	22.5	19	10
Cleveland, Ohio:				
Linseed oil.....	638	32	22.6	10
Vegetable oils.....	638	26.5	18	8.3
Cincinnati, Ohio:				
Linseed oil.....	873	39.5	16.6	9
Vegetable oils.....	873	32.5	13.8	7.4
Detroit, Mich.:				
Linseed oil.....	677	35	21.7	10.3
Vegetable oils.....	677	29.5	18.3	8.7

¹ Based on average loading of cars shipped between July 24, 1918, and February 4, 1920.

Defendants argue that the commodity rates on the vegetable and fish oils are depressed and afford no yardstick for measuring the reasonableness of the rates assailed, having been established primarily to meet competition through the Pacific and South Atlantic

ports. In various cases we have held that the carload rates on copra, peanut, and soya-bean oil were unreasonable to the extent that they exceeded the rates contemporaneously in effect from and to the same points on cottonseed oil, and nothing herein warrants a different conclusion with respect to linseed oil, which moves under substantially similar circumstances.

We find that the rates assailed were, and that the present rates are, and for the future will be, unreasonable to the extent that they exceeded or may exceed the rates contemporaneously applicable from and to the same points on cottonseed oil, in carloads; that complainant made shipments from and to the points in question and paid and bore the charges thereon; that it has been damaged and is entitled to reparation, with interest, in an amount equal to the difference between the charges paid and those that would have accrued on the basis herein found reasonable. Complainant should comply with Rule V of the Rules of Practice. An appropriate order for future will be entered.

68 I. C. C.

No. 12338.

CHARLESTON MILLING COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted September 2, 1921. Decided April 28, 1922.

Rate charged on wheat, in carloads, from Sikeston and Benton, Mo., to Atlanta, Ga., found illegal and shipments found overcharged. Reparation awarded.

H. L. Harp for complainant.

M. G. Roberts for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner. Our conclusions differ from those recommended by him.

Complainant, a corporation, manufactures flour and deals in grain and grain products. By complaint filed February 14, 1921, it alleges that the rate charged on five carloads of wheat shipped during September and October, 1918, from Sikeston and Benton, Mo., to Atlanta, Ga., was unjust and unlawful. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

Sikeston and Benton are in the southeastern part of Missouri on the St. Louis-San Francisco, hereinafter called the Frisco. The shipments moved over the Frisco to Memphis, Tenn., or Birmingham, Ala., and the Southern beyond. Charges were assessed at a rate of 36 cents based on 5 cents over the class-D rate of 31 cents from Cairo, Ill., to Atlanta. Complainant's sole contention is that the applicable rate was 35 cents.

The general basis of rates on grain from points in producing States west of the Mississippi River to destinations in the Southeast is the lowest combination, but from stations on the Frisco in southeastern Missouri rates are made by adding published specific differentials to the rates from Cairo. The basis of rates from Sikeston and Benton to Atlanta when the shipments moved was published in Agent Washburn's origin basis book and prior to June 25, 1918, was 4 cents over Cairo, subject to the provision that this basis will apply

only when the traffic moves via Memphis. The class-D rate applicable on wheat in carloads from Cairo to Atlanta was published in Washburn's southeastern class tariff, and prior to June 25, 1918, was 25 cents. General Order No. 28 of the Director General of Railroads directed that the rates on wheat should be increased "twenty-five (25) per cent, but not exceeding an increase of six (6) cents per 100 pounds." Under authority of that order special blanket supplements to all tariffs were filed, providing for the increases, effective June 25, 1918, including supplements to Washburn's origin basis book and Washburn's southeastern class tariff. The supplements to these two tariffs were identical and provided, under the head of "Application of rates."

Effective June 25, 1918, all rates then in effect named in tariffs enumerated herein and in prior supplements thereto, as indicated, to each of which tariffs this is a special supplement, are increased to the rates shown * * *.

Strictly speaking, no rates on this traffic were published in Washburn's origin basis book. It provided only the different bases for constructing through rates. This tariff contains also distance class and commodity rates for alternative application. In every instance in order to find the rate it is necessary to refer to another tariff, appropriate cross reference being given. With regard to the increase in rates on wheat the special supplement provided: "Where the rate to be increased is 24 cents or less" the increase would be 25 per cent, and "Where the rate to be increased exceeds 24 cents per 100 pounds, increase 6 cents per 100 pounds."

The question presented is:—What is the rate to be increased? Effective May 15, 1919, Washburn's origin basis book was reissued as Agent Speiden's origin basis book showing the basis of rates from Sikeston and Benton to Atlanta as 4 cents higher than Cairo. On February 28, 1920, the differential was made 5 cents higher than Cairo.

Following the ruling of a railroad administration traffic committee in Atlanta that—

Where tariffs or supplements provide for rates from a given point made certain amounts higher than the rates from another point from which rates are published in a separate tariff, both tariffs being subject to the special supplement, the rates to and from the base or junction points are both subject to the increases provided in the special supplement,

defendant contends that the applicable rate was 36 cents, composed of a differential of 5 cents over Cairo and the class rate of 31 cents from Cairo to Atlanta.

Prior to June 25, 1918, the rate from these points of origin to Atlanta via Memphis was ascertained by consulting Washburn's

southeastern class tariff in conjunction with his basis book. This gave a joint rate of 29 cents. On that date the special supplements, identical in wording, amended the two publications. The supplement to the class tariff plainly increased the rate from Cairo to Atlanta to 31 cents. So far as this traffic was concerned, there were no *rates* named in the basis book. The special supplement thereto did not operate to increase the "bases for rates * * * to be used in arriving at rates" from and to the points under consideration. That being so, it did not increase the "4 cents per 100 pounds higher than rates from Cairo" applicable on these shipments.

We find that the rate applicable on these shipments was 35 cents per 100 pounds; that the rate charged was illegal; and that the shipments have been overcharged. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found applicable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

68 I. C. C.

No. 11050.¹

STEWART FURNACE COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY, WESTERN
LINES, DIRECTOR GENERAL, AS AGENT, ET AL

Submitted July 8, 1921. Decided April 20, 1922.

Complainant performs the spotting service between carriers' interchanges and loading and unloading points within its plant at Sharon, Pa., for which the carriers pay it an allowance of 86 cents per car. Complaints, which allege that this amount is less than the cost of the service and ask reparation on shipments made in the past and an increased allowance for the future, dismissed.

L. C. Wykoff, N. P. Beall, Hoyt, Dustin, McKeehan & Andrews, and Dustin, McKeehan, Merrick, Arter & Stewart for complainant.

James Stillwell, Guernsey Orcutt, and Marion B. Pierce for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, AITCHISON, EASTMAN, AND POTTER.
AITCHISON, *Commissioner*:

In these cases, the material facts and the issues are similar, and therefore they have been consolidated for disposition. Exceptions were filed by complainant to the report proposed by the examiner, and the parties argued the case orally.

Complainant operates a blast furnace at Sharon, Pa., in the Shenango and Mahoning Valleys rate district, which we will term the valleys district. It alleges by complaints filed December 2, 1919, and January 21, 1920, that since June 1, 1917, defendants have paid to it an allowance of 86 cents per car for spotting inbound and outbound carload freight at points within its plant which was and is less than the actual cost of the service; that defendants have contemporaneously performed similar spotting services for complainant's competitors at Youngstown and Lowellville, Ohio, and Sharpsville, Pa., without any charge in addition to the line-haul rates; and that thereby complainant has been and is subjected to the payment of rates which were and are unjust, unreasonable, and unjustly discrimi-

¹ This report embraces No. 11167, Stewart Furnace Company v. Pittsburgh & Lake Erie Railroad Company and Director General, as Agent.

natory. Complainant seeks an allowance for the future on all interchange traffic, except ex-lake iron ore, sufficient to cover the reasonable cost of the service. It also asks for reparation for the spotting services performed by it, in connection with interstate shipments, during the period of limitation, and on intrastate shipments during Federal control.

Complainant is successor in interest to the Stewart Iron Company, Limited. The spotting service performed by it, and by defendants for other industries in the valleys district, is described in *Stewart Iron Co. v. P. Co.*, 47 I. C. C., 512, 516, decided December 4, 1917, in which we found—

that the failure of defendants to pay an allowance to complainant for the spotting service of cars moving in interstate commerce while performing such service themselves without additional charge for other similarly situated steel mills subjected complainant to undue prejudice and disadvantage; that complainant was thereby damaged to the extent of the cost of such service in connection with all interstate shipments delivered within two years prior to the filing date of the complaint, the cost to be computed in accordance with the terms of the contract November 28, 1905; and that it is entitled to reparation, with interest.

In the present cases there is a stipulation of record to the effect, among other things, that on March 22, 1917, complainant and the defendant carriers made a contract, effective June 1, 1917, under the terms of which the complainant was to perform the spotting service and to be reimbursed for the portion of the cost chargeable to the respective carriers, such cost to include certain specified items only; that effective June 1, 1917, defendant carriers published tariffs providing that complainant should perform the terminal switching and should be allowed therefor out of the current Sharon rates the actual cost of service, but not exceeding 86 cents per car, which tariff provisions have been continued in effect until the present time. It is further stipulated that complainant has kept a careful record of the expense of this service, and has rendered monthly bills on the basis of actual cost, which defendants have declined to pay in full, but have adjusted at the tariff rate of 86 cents per car. It has been and is defendants' practice and custom to perform the spotting service for most of the industries in the valleys district without charge in addition to the district rates. Among the industries for which this spotting service is performed are certain designated competitors of complainant located at Youngstown, Lowellville, and Leetonia, Ohio, and Sharpsville and West Middlesex, Pa. It is agreed that the competition is direct and controlling, and that the cost of the spotting service adds to the cost of production to the extent that it exceeds the allowance. The cars upon which reparation is claimed were

hauled by defendants, and complainant paid the freight charges thereon and performed the spotting service.

While the spotting service at the competing plants in the valleys district varies in certain respects from that at complainant's plant, the difference is primarily in the extent of the services required at the various plants rather than in the character of such services. At the hearing defendants offered to perform the spotting service and also the intraplant service, with a separate charge for the latter, provided they were permitted to do so at their convenience and without complainant's interference. Complainant states that this would not be satisfactory, and urges that as defendants are performing the spotting service at competing plants at the convenience of the industries, they should do likewise at its plant. No legal obligation rests upon a carrier to perform switching and spotting services solely at a shipper's convenience, and a shipper is not entitled to an allowance for these services if the carrier is ready and willing to perform them but is not permitted to do so by the shipper. *Car Spotting Charges*, 34 I. C. C., 609; *Riter-Conley Mfg. Co. v. Director General*, 58 I. C. C., 327; *Merchants Shipbuilding Corp. v. P. R. R. Co.*, 61 I. C. C., 214. If, however, defendants continue to do the spotting for complainant's competitors at the convenience of their industries, complainant is entitled to like accommodation. Any unjust discrimination or undue prejudice which may exist might be removed by according complainant the same spotting service as defendants perform for its competitors. Its refusal to permit defendants to perform such service would absolve them from the obligation to do so. *Riter-Conley Mfg. Co. v. Director General*, *supra*.

In support of the allegation that the allowance of 86 cents per car is less than the cost of service, complainant has attempted to show the costs of the service in detail, by months or portions of months and separately for interstate and intrastate shipments. Defendants contend that under the contract the cost of the spotting service, and of the intraplant service, should have been allocated on the engine-hour basis rather than on the basis of loaded cars handled, and they object to these cost statements chiefly on this ground. They also question the propriety of charging them with a proportionate share of the costs attributable to the investment in two locomotives, and the depreciation and maintenance thereof, since one is used infrequently, and only when the other is temporarily out of service. They also contend that charges for spotting services in connection with shipments of slag for wasting should be excluded. The latter contention is without merit, inasmuch as defendants perform such spotting service without charge for complainant's competitors, the matter

here in issue being equality of service under substantially similar circumstances and conditions.

Complainant's exhibit states in detail the total cost for each month. The average cost per car was determined by dividing the total cost by the number of loaded cars handled during the month, including cars of ex-lake ore and cars handled in intraplant service. The average cost per car was then multiplied by the number of loaded cars handled in interstate and intrastate spotting service, respectively, for each of the defendant carriers, not including shipments of ex-lake ore. The average cost as computed by complainant ranged generally from \$1.32 to \$3.69 per car. However, in October and November, 1919, during the steel strike, the costs are shown to have averaged \$20.34 and \$11.36 per car, respectively.

The record discloses that the allowance made to complainant was determined before publication in the tariffs, by a committee created by the carriers. It includes 10 per cent in addition to what the committee found to be the reasonable cost of spotting cars at complainant's plant based upon tests made in 1915. This basis for settlement was the same as that accorded about 50 other plants, some of which are located at Sharon or in its immediate vicinity. Undoubtedly the costs of labor and materials have increased materially since these allowances were fixed. The cost of service at the time of the hearing was admitted by a witness for defendants to be two or three times greater than in 1915. The costs of labor, coal, and oil to complainant were less than to defendants, and the service was performed by complainant at a lesser expense than it could have been performed by defendants. The record does not indicate the extent to which the costs developed may have been lessened by the general recession of price levels since the hearing.

Defendants criticise complainant's method of segregating costs between interchange and intraplant service as being contrary to the terms of the contract entered into on March 22, 1917, and to our findings in the *Chicago, West Pullman & Southern R. R. Co. case*, 37 I. C. C., 408. The contract was of a standard form in general use and, among other things, provided:

The total cost of said service, as determined by section third of this agreement, shall be prorated between the Industrial Company and the Railroad Companies, in the proportion that the loaded cars handled for each of them is to the total number of loaded cars handled. If, for any reason, the operation within the plant differs from the operation of the interchange, a record of the engine hours in each class of service shall be compiled, and the total cost divided between the Industrial Company and the Railroad Companies on the basis of engine hours.

Defendants insist that, since complainant's expenses for labor accrued upon a time basis, the engine-hour method or time basis

must be used in prorating expenses. The interchange and intraplant services were performed by the same locomotive and crew and in substantially the same manner. Cars of both classes of service were often handled in the same movement, and there was no difference in the methods of operation or in the extent of the service except that the interchange movements were for longer distances and consumed more time per car than the average intraplant movement. Complainant contends that it would be impracticable to distribute the costs on an engine-hour basis. In complainant's view it was not required to do so by the terms of the contract, and it considers the situation to be substantially different from that considered by us in the *Chicago, West Pullman & Southern R. R. Co. case, supra*, in which we said:

Interior plant switching or any other service differing radically in nature from the general work of switching cars between industries and connections should be segregated as to investment and operating costs of the industrial line so far as this may be feasible. The engine hour will usually be found a safer guide than cars handled for making this general separation.

The act makes it unlawful for carriers to allow more than just and reasonable compensation to an industry for transportation services or facilities furnished by it. In the case just cited we further said:

Where the industrial line acts only in the capacity of a plant facility and not a common carrier, the trunk lines need not, in the absence of unjust discrimination, make any allowance so long as they are ready to perform the switching wherever by custom and general usage the line-haul rate covers that service. *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C., 237; *Car Spotting Charges*, 34 I. C. C., 609, 617. Therefore an allowance in excess of the cost to the trunk line of switching to and from the plant would be unlawful. By granting more the trunk lines would in that measure be depleting their revenues. The allowance is further limited in that it may not exceed the reasonable cost to the industry of performing the service.

While we expressed the view in the *Chicago, West Pullman & Southern R. R. Co. case, supra*, as we have in others, that the engine-hour affords a more reliable guide for the general separation of interchange and intraplant costs than the proportionate number of cars handled in each class of service, apportionment in any particular case is a means to the production of accurate results. The record here indicates that the loaded-car basis of segregating costs as followed by complainant does not bring about an acceptable result. It assumes equal costs per car for switching interchange traffic subject to an allowance, and intraplant and ex-lake ore traffic upon which no allowance is claimed. It charges defendants with a proportionate part of the idle time of complainant's locomotive and switching crew, and takes no accurate account of the relative costs of performing other services incidental to the interchange and intraplant and ex-

lake ore traffic, such as moving empty cars and weighing. Manifestly the average cost per loaded car for performing these respective services could not be determined with accuracy until there had been made a general separation of the total expense on an engine-hour or other reliable basis.

Obviously, the failure or refusal of defendants to perform the spotting service for complainant, or to reimburse it for the cost thereof, while contemporaneously performing a like service without charge for others similarly situated, is unduly prejudicial to complainant and unduly preferential of its competitors. It is likewise true that their failure or refusal to perform for complainant a spotting service included in their line-haul rates or to make an allowance therefor equal to the cost to complainant of performing the service or to what the cost to defendants would be if they should perform it, whichever may be lower, would also subject complainant to unreasonable rates and charges for the line-haul service. But the record fails to establish the extent, if any, to which the allowance of 86 cents per loaded car is less than would be just and reasonable for the common-carrier services performed by complainant, or the extent, if any, to which it falls short of reimbursing complainant for the cost of performing services substantially like those performed by defendants for its competitors without charge. In the absence of such a showing, there is no basis for a finding that defendants' refusal to increase the allowance has subjected, or will in the future, subject complainant to the payment of unreasonable rates and charges or to undue prejudice or unjust discrimination. We find that these allegations have not been sustained. An order will be entered dismissing the complaints, as complainant has elected to perform the spotting service itself.

68 I. C. C.

No. 12295.

WEST VIRGINIA PULP & PAPER COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted January 23, 1922. Decided April 21, 1922.

Rate on broken limestone, in carloads, from Thomasville, Pa., to Tyrone, Pa., during Federal control found unreasonable. Reparation awarded.

Charles M. Potter, Arthur B. Hayes, and C. C. Furgason for complainant.

Royal McKenna, Cyrus B. Stafford, John F. Finerty, and E. O. Blanchard for defendant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS DANIELS, POTTER, AND LEWIS.

By DIVISION 4:

Exceptions were filed by defendant to the report proposed by the examiner and the case was orally argued before us.

Complainant, a corporation, manufacturing paper at Tyrone, Pa., by complaint filed February 17, 1921, alleges that the rate charged for the transportation of 97 cars of broken limestone shipped from Thomasville, Pa., to Tyrone, Pa., during the period, June 25, 1918, to February 5, 1919, inclusive, was unreasonable. We are asked to award reparation. Rates are stated in amounts per net ton.

The shipments moved from Thomasville over the Western Maryland to Hanover, Pa., and the Pennsylvania rails to Tyrone, 177 miles. Charges were collected at the applicable combination rate of \$3.30, made up of the sixth-class rate of 90 cents from Thomasville to Hanover and a commodity rate of \$2.40 beyond. During the period of movement there was in effect a commodity rate of \$1.70 on ground limestone between the same points. The claim for reparation is based upon the difference between the rate charged and the rate of \$1.70.

In 1912, the Western Maryland published a commodity rate on limestone from Thomasville to Tyrone, which was continued in effect until April 12, 1917. At that time the tariff was reissued and carried the same rate, but the commodity description was changed to read

"ground limestone." Between April 12, 1917, and June 25, 1918, the Western Maryland and the director general, after he assumed charge of the railroads, assessed the ground-limestone rate against complainant's shipments of broken limestone, instead of the \$3.30 rate, which was applicable. Shortly prior to the latter date, it was discovered that the commodity rate, which by reason of various increases had become \$1.70 on June 25, 1918, was not applicable on broken limestone, and beginning on June 25, 1918, and continuing until February 5, 1919, complainant's shipments of broken limestone were assessed the combination rate. On February 10, 1919, the commodity rate was changed to apply on "limestone."

Defendant's agent admitted that the tariff description "ground limestone" was published in error, and should have applied on broken limestone.

Broken limestone ranges in value from \$1.25 to \$1.50 a ton, as compared with the value of ground limestone of \$3 a ton. Broken limestone is transported in open-top cars, while ground limestone requires a higher grade of equipment. The average loading of the 97 cars was 96,210 pounds. The rate charged yielded 18.6 mills per ton-mile and 89.6 cents per car-mile as compared with 9.6 mills per ton-mile and 46.2 cents per car-mile under the rate of \$1.70. Other comparisons were submitted, including rates lower than \$3.30 on ground limestone for longer hauls over three and four lines.

Defendant states that the \$1.70 rate was originally a State-made rate and was depressed, and that the lower rates for longer hauls cited by complainant were due to the fact that large quantities of ground limestone are used for agricultural purposes. He further states that ground limestone is usually moved for short distances and will not move for long distances except under a subnormal rate. Comparisons were offered intended to show the \$3.30 rate to be reasonable, but almost every rate mentioned was lower for a longer haul than the rate assailed.

On brief we are asked to authorize the Western Maryland and the director general to waive collection of undercharges which accrued between April 12, 1917, and June 25, 1918. The Western Maryland is not a party defendant, and the complaint attacks rates charged only from June 25, 1918, to February 5, 1919.

Defendant contends that the proof falls short of affording certainty that complainant paid and bore the charges. Complainant's assistant purchasing agent offered for inspection the paid freight bills which were rendered in complainant's name, and marked "paid" at Tyrone; and he testified that he had compared the amounts of freight charges shown on the freight bills, and as shown on the reparation statement, with the amounts charged on complainant's

books to its limestone account in the cost of manufacture of paper and that the amounts agree.

We find that the rate assailed was unreasonable to the extent that it exceeded \$1.70 per net ton; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

68 I. C. C.

No. 11033.
SWIFT & COMPANY
 v.
**DIRECTOR GENERAL, AS AGENT, ALABAMA & VICKS-
 BURG RAILWAY COMPANY, ET AL.**

Submitted March 31, 1920. Decided April 28, 1922.

Shipments of soap, in carloads and less than carloads, from Chicago, Ill., to points in southern classification territory found to have been overcharged. Reparation awarded.

R. D. Rynder for complainant.

Frank W. Gwathmey and *Alex. M. Bull* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.
 BY DIVISION 3:

Exceptions were filed by complainant and the Director General of Railroads, as agent, to the report proposed by the examiner. We have reached conclusions differing from those suggested by him.

Complainant, a corporation, manufacturing soap at Chicago, Ill., by complaint filed November 24, 1919, alleges that the rates and charges collected on numerous carload and less-than-carload shipments of soap from Chicago, Ill., to various points in southern classification territory, made between November 27, 1917, and December 20, 1918, were unlawful under section 20 of the act to regulate commerce, and unreasonable. The prayer is for reparation.

A history of the ratings on soap in southern classification is detailed in *Williams Co. v. Hartford & New York Transportation Co.*, 48 I. C. C., 269. It is sufficient here to state that during the period covered by the complaint the southern classification and the commodity tariffs making reference thereto provided for application of sixth-class rates, any quantity, or commodity rates less than sixth-class, on soap of an actual value not exceeding 12 cents per pound, the shipper being required to declare in writing at the time of shipment that the actual value did not exceed 12 cents. When the actual value exceeded 12 cents per pound, or no value was declared, third-class rates applied. This 12-cent value represented a dividing line between the lower grades, such as laundry soap, and the higher and

more expensive grades, such as toilet soap. A rating of first class on soap in glass or earthenware without restriction as to value is not here in issue.

In November, 1917, general increase in the cost of ingredients entering into the manufacture of soap had made it impossible for complainant to truthfully declare an actual value not in excess of 12 cents per pound upon grades of soap which formerly had been shipped under such declarations. As a consequence third-class rates were collected upon complainant's shipments instead of the sixth-class or lower commodity rates previously assessed. In some instances the third-class rates were joint rates governed by southern classification; in others combination rates governed by the official classification to the Ohio River or Memphis, Tenn., and by the southern classification beyond. Of the latter, only the factors governed by the southern classification are assailed. Joint commodity rates on soap from Chicago to southern classification territory were also in effect on soap rated sixth class in southern classification.

No authority was granted by us under the second Cummins amendment for publication in terms of value of the rates here assailed. On March 15, 1918, we authorized ratings based on value in southern classification but they were not made effective by the carriers until December 20, 1918.

In *U. S. Industrial Alcohol Co. v. Director General*, 68 I. C. C., 389, as here, we had before us rates which, by tariff provision, were dependent upon declarations of value made by shippers but had not been authorized by us under the second Cummins amendment. We found that the carriers' liability would be effectively limited thereby, that the limitation as to value was therefore void, but that the rates, stripped of the void limitation, were valid and applicable.

Following our decision in that case, we find that the contemporaneous sixth-class or lower commodity rates, governed by southern classification, were applicable to the shipments here considered. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found to have been applicable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

68 I. C. C.

No. 11235.

D. NAGASE & COMPANY, LIMITED,

v.

DIRECTOR GENERAL, AS AGENT, NEW YORK CENTRAL
RAILROAD COMPANY, ET AL.

Submitted November 22, 1921. Decided April 28, 1922.

Rate on galvanized wire, in carloads, from Grand Crossing, Ill., to Seattle, Wash., for export, found not unreasonable or unduly prejudicial. Complaint dismissed.

Gilroy & Townsend and C. W. Eggers for complainant.

John F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the import and export business at New York, N. Y., alleges that the rate of \$1.125 charged on two carloads of galvanized wire shipped June 26, 1918, from Grand Crossing, Ill., to Seattle, Wash., for export to Japan was unreasonable and unduly prejudicial to the extent that it exceeded the export rate of 60 cents subsequently established. Reparation only is asked. Rates are stated in amounts per 100 pounds.

Grand Crossing is within the switching limits of Chicago, Ill., and, with respect to traffic destined to Seattle for export, takes Chicago rates. Prior to June 25, 1918, an export rate of 40 cents was in effect. Contemporaneously the domestic rate was 90 cents. On that date, following General Order No. 28 of the Director General of Railroads, the export rate was canceled and the domestic rate, which then became applicable on export traffic, was increased to \$1.125. On July 1, 1918, the director general established an export rate of 75 cents, which, on April 21, 1919, was reduced to 60 cents.

Complainant concedes the reasonableness of the \$1.125 rate as applied to domestic traffic but contends that export rates are in effect proportional rates and should always be lower than domestic rates. It shows that on a number of representative commodities the average export rate in effect prior to General Order No. 28 was 44.5 per cent of the

domestic rate; that the 60-cent rate subsequently established on this traffic was 53.33 per cent of the contemporaneous domestic rate; that it compared favorably with the average percentage that other export rates established July 1, 1918, and thereafter bore to the contemporaneous domestic rates; and that the 60-cent rate represented an increase of 50 per cent over the export rate in effect prior to June 25, 1918. No evidence of undue prejudice was submitted.

Defendants maintain that the rate assailed was reasonable; that export rates are and always have been subnormal; and that, as no water competition existed at the time of movement, there was no necessity for the continuance of export rates lower than domestic rates.

The 90-cent domestic rate in effect immediately prior to June 25, 1918, was established under authority granted by us in *Transcontinental Commodity Rates*, 48 I. C. C., 79. There is nothing inherent in export traffic that entitles it as such to take lower rates than domestic traffic.

We find that the rate assailed was not unreasonable or unduly prejudicial. The complaint will be dismissed.

68 I. C. C.

No. 11785.

GAYNOR BROTHERS

v.

DIRECTOR GENERAL, AS AGENT, AND CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Submitted June 6, 1921. Decided April 28, 1922.

1. Allegation that complainants were unduly prejudiced in the distribution of empty cars for the shipment of hay as compared with the distribution to other shippers at Forestburg and Woonsocket, S. Dak., not sustained by the evidence.
2. Carload minimum applicable on shipments involved not shown to have been unreasonable.
3. Complaint dismissed.

John S. Burchmore, Luther M. Walter, and Nuel D. Belnap for complainants.

John N. Davis and J. F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner, and the case was orally argued before us.

Complainants, K. C. and E. S. Gaynor, copartners, were engaged in buying and selling hay in the fall of 1919 and the spring of 1920 at Forestburg, S. Dak., under the firm name of Gaynor Brothers. By complaint filed September 8, 1920, they allege that defendants failed to distribute empty cars for the shipment of hay fairly and equitably between complainants and their competitors at Forestburg and Woonsocket, S. Dak., thereby causing undue prejudice to complainants and undue preference of these competitors. They further allege that in many instances the cars furnished were so small that it was impossible to load the carload minimum applicable, and that the rates and the regulations as to minimum weights on certain shipments were and are unreasonable. We are asked to prescribe reasonable and nonprejudicial rules for the distribution of empty cars for hay shipments; to prescribe reasonable rules and regulations with regard to minimum weights on carload shipments of

65 I. C. C.

baled hay from Forestburg to interstate destinations, and to award reparation.

The purpose of this proceeding as disclosed by the evidence is to obtain reparation under section 3 for damages alleged to have been caused by preferential treatment of complainants' competitors in the distribution of empty cars, and to obtain reparation under section 1 because certain cars which were furnished could not be loaded to the applicable minimum.

Forestburg is on the Southern Minnesota division of the Chicago, Milwaukee & St. Paul, hereinafter referred to as the Milwaukee, about 9 miles east of Woonsocket. This division extends east and west through Forestburg and Woonsocket and terminates a few miles west of the latter point. Another line of the Milwaukee, known as the Aberdeen division, runs north and south through Woonsocket but does not reach Forestburg. The Southern Minnesota division is considered a branch line. The Aberdeen division is one of the main arteries of the Milwaukee system.

Complainants, who had purchased large quantities of loose hay, began shipping from Forestburg about October, 1919. Operations were started with one baler, but during November and December additional balers were acquired, so that by the 1st of January complainants operated 10 balers and controlled practically all the baling machinery at Forestburg. The demand for hay was so great that they not only increased their purchases of loose hay but bought up all the baled hay they could acquire in and around Forestburg. This unusual activity was due to a hay shortage in Montana caused by a drought in that State. To save the live stock there hay in great quantities was purchased at other points, chiefly in South Dakota. Complainants had contracted to furnish 2,000 tons to the Montana Elevator Company by about January 7, 1920. Early in February the hay market broke, leaving complainants with a large amount of hay on hand, as a consequence of which they suffered a considerable loss.

The evidence submitted by complainants in support of their allegation of undue prejudice, the burden of proof being upon them, does not justify a finding in their favor. It appears that in October and November, 1919, they made repeated requests for an indefinite number of cars, and in December for 10 a day, a number conceded to be in excess of their needs. There is nothing to indicate the exact number of cars that would have met complainants' daily requirements, but it is apparent only that they did not receive the number of cars they could have used. No specific evidence was offered that any other shipper at Forestburg or Woonsocket received any preferential treatment to the undue prejudice of complainants. Exhibits

introduced by them show that they shipped 23 cars of hay in October, 22 in November, 49 in December, and 77 in January, a total of 171 cars. Defendants show that from September to January, inclusive, complainants shipped 163 cars, and that 72 cars moved out of Forestburg in the names of 14 other shippers. The discrepancy between these figures possibly is due to the fact that complainants sold 8 of their cars under load to one of the shippers shown in defendants' exhibit, besides selling 2 cars previous to loading to another shipper. After January complainants had no difficulty in obtaining cars, doubtless because of the break in the hay market, which lessened the demands of other shippers. Complainants shipped 122 per cent more cars in December than in November, and 57 per cent more in January than in December.

During the period covered by the complaint a total of 449 cars were shipped from Woonsocket, of which 373 contained hay. Of the latter, 57 moved in October, 52 in November, 123 in December, and 141 in January, divided among eight shippers. The largest shipped 43 cars in October, 37 cars in November, and 80 cars in December. Individual shipments from Woonsocket for January were not stated. The evidence indicates that shippers at that point aided in making cars available for hay shipments by consolidating merchandise cars which arrived partly loaded; also that they assisted in the prompt loading of cars by building temporary roadways to the tracks not ordinarily used for loading. As no records were kept of the number of cars ordered at either Forestburg or Woonsocket, the proportion which the cars furnished bore to the number ordered can not be stated.

One of the complainants asserts that during December he saw 40 cars in the yards at Woonsocket, and that on a number of occasions empty cars were hauled through Forestburg to Woonsocket. Defendants do not deny this, but say that Woonsocket is a junction, whereas Forestburg is a small branch-line point with one passing track; and that naturally cars were moved into Woonsocket for distribution to points on the Aberdeen and Southern Minnesota divisions of the Milwaukee. They assert that the railroad administration made every effort to facilitate the movement of hay and feed to the drought region in Montana, published half rates, and gave priority to these movements; that during this period there was a car shortage and only 70 per cent of the orders for box cars were filled; and that matters were further complicated by the fact that on November 1, 1919, a serious strike of coal miners began which necessitated the conservation of fuel.

Counsel for complainants stresses the fact that the extent of a shipper's business and not the number of shippers engaged in that business is the controlling factor in determining the pro rata allow-

ance of cars to which such shipper is entitled when a car shortage occurs. The extent of complainants' business for the previous year was not shown, and there is nothing in the record to indicate that complainants ordinarily shipped a greater number of cars from Forestburg than other shippers at that point or at Woonsocket. The facts warrant a contrary conclusion, for the evidence is convincing that complainants, foreseeing the unusual demand for hay in Montana, began purchasing in large quantities and greatly increased their facilities for baling. Under such circumstances the defendants could not have been expected to take care of their sudden and increasing demands for cars immediately and fully to the exclusion of other shippers. To have done so might have subjected defendants to a charge of undue preference.

The further contention of complainants that the applicable carload minimum of 25,000 pounds was too high is not established. They rely upon exhibits introduced to show that from October, 1919, to June, 1920, inclusive, the minimum weight was not loaded into 111 of the cars supplied. The weights given differ very materially from those shown in defendants' exhibit. The latter stated that complainants loaded certain cars in excess of the minimum while other cars of the same or greater cubic capacity were not loaded to the minimum. The record does not contain positive evidence that the baling was done properly or that the cars were loaded to full capacity. One of the complainants conceded that there might have been cars which could have been loaded more heavily. On February 29, 1920, the Milwaukee amended its tariffs to make actual weight apply when cars are loaded to full visible capacity.

We find that complainants' allegation of undue prejudice has not been sustained, and that the carload minimum assailed is not shown to have been unreasonable. The complaint will be dismissed.

68 I. C. C.

No. 12605.

REFINITE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND CHICAGO,
BURLINGTON & QUINCY RAILROAD COMPANY.

Submitted November 25, 1921. Decided April 28, 1922.

Charges collected on filtering clay, ground and baked, in carloads, from Ardmore, S. Dak., to Omaha, Nebr., and Kansas City, Mo., found not unreasonable. Complaint dismissed.

C. E. Childe and H. D. Bergen for complainant.

John F. Finerty, Robert W. Fyfe, John C. Brooke, and J. W. Weingarten for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant is a corporation manufacturing apparatus for softening water, with principal place of business at Omaha, Nebr. By complaint filed February 28, 1921, it alleges that the class C rates charged on four carloads of what it describes as ground clay, shipped from Ardmore, S. Dak., two to Omaha in June, 1919, and two to Kansas City, Mo., in February and March, 1920, were unjust and unreasonable. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments consisted of a product of hydrate aluminum silica, a kind of clay of which the only known deposit is at Ardmore. The clay is there ground, rolled, and graded into small cylindrical pieces about three-sixteenths of an inch long and one-sixteenth of an inch in diameter, which are baked in rotary kilns, but not vitrified as is brick. They are then soaked in caustic soda for some hours, washed in water, and dried. They resemble small-shaped pieces of ordinary brick, and are only sold for use in connection with apparatus mar-

keted by complainant for water filtering and softening. They may be described as "filtering clay, ground and baked," rather than "ground clay."

The shipments, aggregating 238,460 pounds, moved over the Chicago, Burlington & Quincy. Charges of \$1,267.36 were collected at class C rates of 47.5 cents to Omaha, 501 miles, and 57.5 cents to Kansas City, 656 miles, on the theory that the shipments consisted of ground clay, n. o. i. b. n., rated class C in western classification. Defendants now assert that this commodity is a water-softening compound, and that charges should have been assessed at the fifth-class rates applicable on water clarifying and purifying compounds.

On May 15, 1921, the Chicago, Burlington & Quincy established commodity rates of 53.5 cents to Omaha and 61.5 cents to Kansas City on filtering clay, ground. The commodity rate to Omaha is the same as the class D rate, and that to Kansas City is made by adding to the rate to Omaha the customary commodity rate arbitrary. The class D rate to Kansas City is 63.5 cents. These rates are satisfactory to complainant and are not assailed.

The description "ground clay, n. o. i. b. n.," was not broad enough to cover this commodity, and it was not a water clarifying and purifying compound within the meaning of the classification description. In the absence of specific ratings or rates on the article shipped it becomes necessary to determine whether or not the charges collected were reasonable. *Memphis Freight Bureau v. K. C. S. Ry. Co.*, 17 I. C. C., 90.

The rates upon which the claim for reparation is based were approximately the same as the contemporaneous class D rates from and to the same points. Complainant compares its product with a number of other clay products which are accorded class E rates under the western classification, namely: Fire clay, crude or ground; clay, n. o. i. b. n., crude; brick, building, common or pressed, fire, including fire brick shapes or paving, n. o. i. b. n., loose or in packages; brick, crushed or ground; brick, fire clay, loose or in packages; brick, furnace or tank blocks; brick, segment sewer blocks, vitrified clay; sewer pipe or sewer pipe fittings, clay, crude or earthen, loose in open or closed cars; tile, hollow building; tile, drain or drain-tile fittings, clay crude or earthen subject to certain specifications. Complainant's product is worth about 3.6 cents per pound, or \$72 per ton. The values of the articles rated class E are not of record. Complainant also offered numerous rate comparisons.

Defendants urge that the subsequently established commodity rates represent voluntary reductions and were made less than maximum reasonable rates in order to help this industry develop its new

product; that only five cars were shipped to Omaha and Kansas City during the year 1920; and that the volume of this traffic does not justify the extension of the commodity rates back to the period of movement here considered merely for the purposes of awarding reparation. The 47.5-cent rate to Omaha yielded ton-mile earnings of 18.96 mills and the 57.5-cent rate to Kansas City 17.58 mills.

We find that the charges collected were not unreasonable. The complaint will be dismissed.

INVESTIGATION AND SUSPENSION DOCKET No. 1493.

INTERCHANGE SWITCHING CHARGES AT MISSOURI
PACIFIC R. R. STATIONS IN KANSAS AND MISSOURI.

Submitted March 24, 1922. Decided April 28, 1922.

Proposed increased charges for switching at certain Missouri Pacific stations in Kansas and Missouri found not justified, and suspended schedules ordered canceled.

Thomas T. Railey, W. H. Thompson, and Henry G. Herbel for respondent.

E. H. Hogueland for Southwestern Millers' League; *W. P. Huston* for Arkansas City, Kans., Chamber of Commerce; and *John J. Hartnett* for Fort Scott, Kans., Chamber of Commerce.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, CAMPBELL, AND COX.
BY DIVISION 3:

By schedules filed to become effective February 16, 1922, the Missouri Pacific Railroad, respondent, proposes to increase its charges for switching applicable in connection with interstate line-haul shipments between connecting lines and industries on its own line at Arkansas City, Fort Scott, Lyons, Paola, Pittsburg, and Pleasanton, Kans., and Harrisonville and Liberal, Mo., from \$2.50 to \$7 per car; at Fredonia, Kans., from \$2.50 to \$5; and at Lamar, Mo., from \$4 to \$7. Upon protest of the Arkansas City Chamber of Commerce and the Southwestern Millers' League the schedules were suspended until June 16, 1922.

At the points named respondent and other carriers serving them generally absorb the switching charges of connecting lines on competitive traffic. Recently certain of the other carriers increased their charges to the amounts here proposed.

Respondent states that during December, 1921, and January, 1922, the switching charges were absorbed on approximately 90 per cent of the interstate traffic subject thereto, leaving but a small amount of traffic on which the shipper paid the switching charge. Protestants question this percentage and assert that the charges are absorbed on less than 50 per cent of the traffic.

Respondent's primary object in proposing these increases is to meet the increases effected at the points under consideration by the other carriers, in order to equalize the absorptions made by the latter when they perform the line haul on competitive traffic destined to or originating at industries on the Missouri Pacific. No evidence was introduced concerning the nature or cost of the service performed. Protestants point out that the increases would seriously affect their business, prejudice them, and favor points where no increases were made.

The present charges are applicable also on intrastate traffic. No change is proposed therein by respondent, inasmuch as no change has been made by the other lines serving these points. Generally, the switching charge at other points in Kansas and Missouri is \$2.50 per car on both interstate and intrastate traffic.

The increases established by the other lines serving these points were not protested, but a complaint is pending before us assailing the increased charges in effect at Arkansas City, and protestants contemplate filing complaints covering the other points.

In *Interchange Switching at Wichita*, 61 I. C. C., 205, we condemned a proposed increase by the St. Louis-San Francisco at Wichita, Kans., from \$2.50 to \$7 per car, saying that while \$2.50 may be low the record was insufficient to warrant a definite finding of what would be reasonable. That is equally true here.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

68 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1480.
TRANSIT PRIVILEGES ON GRAIN AT SCHUYLER, NEBR.

Submitted March 25, 1922. Decided May 2, 1922.

Proposed cancellation of transit arrangement at Schuyler, Nebr., on grain and seeds originating on the Chicago, Burlington & Quincy found justified in part. Suspended schedules ordered canceled without prejudice to the publication of schedules in conformity with the findings herein.

J. B. Driggs for respondents.

Gerald Ehrenberger for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, CAMPBELL, AND COX.
BY DIVISION 3:

By schedules filed to become effective January 26 and February 5, 1922, respondents propose to eliminate the transit arrangement on grain and seeds at Schuyler, Nebr., originating at points on the Chicago, Burlington & Quincy, hereinafter called the Burlington, west of Lincoln and Chester, Nebr., destined to Missouri River points, Chicago, Ill., St. Paul, and Duluth, Minn., and points taking the same rates. The proposed cancellations would result in the application of combination rates higher than those now applicable. Upon protest of the reorganization committee of the Wells-Abbott-Nieman Company, the operation of the schedules was suspended until June 25, 1922.

Schuyler is on the Union Pacific, which serves protestant's mill, about halfway between Columbus and Fremont, Nebr. It is also the northern terminus of the Ashland-Schuyler branch of the Burlington. These carriers have no track connection at Schuyler but connect at Columbus and Fremont. Protestant's mill at Schuyler is not reached by the Burlington and its shipments arriving at Schuyler over that line must be drayed about 0.75 mile.

For several years respondents' tariffs have provided for the application of a charge in addition to the joint rate on grain and seeds from and to the points under consideration when turned over to the Union Pacific at Columbus or Fremont and taking transit service at Schuyler. The present charge for this service is 4.5 cents per 100 pounds. Movements via Fremont or Columbus involve either an out-

of-line or a back haul. In the suspended schedules it is proposed to cancel the transit arrangement on shipments moving via either of these points.

At the hearing respondents expressed willingness to continue the arrangement via Fremont, as traffic can be handled more conveniently by way of that junction than via Columbus. The discontinuance of the arrangement via Columbus, if continued via Fremont, is agreeable to protestant, who appears to be the only shipper interested in the suspended schedules.

We find that the respondents have justified the proposed cancellation of the present transit arrangement on shipments moving via Columbus, but not as to shipments moving via Fremont.

An order will be entered requiring the cancellation of the schedules under suspension without prejudice to the establishment, on not less than five days' notice, of new schedules in conformity with the findings herein.

68 I. C. C.

No. 12375.

F. S. ROYSTER GUANO COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted January 23, 1922. Decided April 29, 1922.

Minimum charge per car on dry phosphate rock from Brewster, Fla., to Royster, Fla., during Federal control, found not unreasonable. Complaint dismissed.

Cadwallader J. Collins and *D. A. Dashiell* for complainant.

Fred W. Heid, John F. Finerty, and Alexander M. Bull for defendant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, POTTER, AND LEWIS.

BY DIVISION 4:

Exceptions were filed by the director general, as agent, to the report proposed by the examiner, and the case was orally argued. We have reached conclusions different from those recommended by him.

Complainant, a corporation manufacturing commercial fertilizers at Norfolk, Va., and other points, by complaint filed February 23, 1921, alleges that the minimum of \$15 per car exacted for the transportation of 469 carloads of dry, crude, unground, land pebble phosphate rock from Brewster, Fla., to Royster, Fla., was unjust and unreasonable. The prayer is for reparation only.

Land pebble phosphate rock is one of the principal raw materials used in the manufacture of commercial fertilizers. Its value during 1918 ranged from \$2 to \$3 per net ton. From December 24, 1906, to June 24, 1918, a rate of 12 cents per net ton was applicable from Brewster to Royster on phosphate rock based on the distance scale of 1 cent per net ton per mile prescribed by the Railroad Commissioners of the State of Florida on December 17, 1903. On June 25, 1918, the director general established a rate of 18 cents per net ton, subject to a minimum of \$15 per car. The \$15 minimum charge is still in effect. The shipments moved over the Atlantic Coast Line, 12 miles.

Under normal conditions there is no movement of phosphate rock from Brewster to Royster. On December 5, 1916, complainant entered into a contract with the American Cyanamid Company at

68 I. C. C.

Brewster for 50,000 tons of phosphate rock, to be furnished in equal monthly installments during the year 1918. During the first five months of that year, owing to abnormal transportation conditions, defendant was unable to move phosphate rock from Brewster to Norfolk. In the meantime, the rock assigned to complainant was accumulating at Brewster. By the time defendant was able to accept shipments of that commodity, complainant was unable to handle them in Norfolk. Accordingly, complainant shipped the rock which had accumulated at Brewster to its own mine at Royster, there to be temporarily stored. The shipments left Brewster between August 21, 1918, and December 31, 1918, averaging about four cars a day. The average loading was about 42.5 tons and the minimum charge was applicable. The rock was subsequently shipped from Royster over defendant's lines to complainant's plants at Norfolk and other points at the same rates as were contemporaneously maintained from Brewster to complainant's plants. By letters dated July 27 and 31 and August 10, 1918, complainant had explained these circumstances to defendant and had requested that the \$15 minimum be waived. This defendant declined to do.

The \$15 minimum was equivalent to about 35 cents per net ton and represented an increase of nearly 200 per cent over the rate in effect prior to June 25, 1918. As tending to show that the latter rate was unduly low, defendant quotes the following from the annual report of the Florida commission for the year ending March 1, 1904:

The rate of 1 cent per ton per mile may appear very small if a shipment is only moved ten or twenty miles, but the Commission, in fixing that rate, were familiar with the locality of the phosphate producing sections and their distance from the ports, and knew that no phosphate was shipped such short distances.

Although without showing comparable traffic and transportation conditions, defendant introduced an exhibit showing the earnings per car yielded by the rates maintained on other low-grade commodities for a distance of 12 miles within the State of Florida, during the period covered by the complaint, as follows: \$15 on lime, \$15.60 on cement, \$18 on ground phosphate rock, \$18.40 on lumber, \$21.04 on logs, \$24 on roadway material, \$26.67 on gravel, \$30.59 on brick, \$34.40 on stone, and \$56 on coal.

In *Swift & Co. v. Director General*, 61 I. C. C., 751, we held that the minimum of \$15 per car on shipments of wet phosphate rock from the mine at Alafia, Fla., to the drying plant at Agricola, Fla., a distance of 17 miles, during the period from June 25, 1918, to December 5, 1919, was unreasonable, and awarded reparation to the basis of the rate of 20 cents per long ton established on the latter date.

This decision is not controlling in the instant case. Wet rock contains 20 per cent of water. The movement from mine to drying plant is regular, averaging 8 to 10 cars per day, and the 20-cent rate is a proportional rate applicable on wet phosphate rock to be dried and reshipped via the Seaboard Air Line to interstate destinations. In the handling of wet rock the shipper set out the cars at point of origin and spotted them at point of destination, while in the handling of the dry rock in the instant case this service was performed by the carrier. The cost of this service to the shipper was said to be about \$3.25 per car.

We find that the charges assessed were not unreasonable. The complaint will be dismissed.

68 I. C. C.

No. 12270.

CHESEBROUGH MANUFACTURING COMPANY,
CONSOLIDATED,

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA
RAILROAD COMPANY, ET AL.

Submitted January 23, 1922. Decided April 29, 1922.

Third-class rates collected on vaseline, in carloads, from Perth Amboy to Jersey City, N. J., during Federal control, found legally applicable and not unreasonable. Complaint dismissed.

George N. Brown and Brown & Boyle for complainant.

F. W. Smith and Fred W. Heid for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued before us. We have reached conclusions different from those recommended by him.

Complainant, a corporation manufacturing petroleum products at Perth Amboy, N. J., by complaint filed February 16, 1921, alleges that the application of the third-class rates to carload shipments of its products, from Perth Amboy, to Jersey City, N. J., prior to and during Federal control resulted in the collection of charges which were unreasonable and illegal. We are asked to require the defendants to apply in the future the fifth-class rates, and to award reparation. As the movement was intrastate, we are without jurisdiction to prescribe rates for the future or to award reparation on shipments moving prior to Federal control. We will therefore consider only the shipments which moved during Federal control.

"Vaseline" is a trade name applied to complainant's products. It describes a preparation made principally from petrolatum, which is the residue of crude petroleum oil after extraction of the lighter oils, purified by filtration through fuller's earth. Petrolatum constitutes approximately 90 per cent of the various products manufactured by complainant. Some are medicated while others are not. The chemicals in the medicated products vary from 1.5 to 10

per cent. The products are put up in collapsible tubes, bottles, and tins of various sizes, and are packed for shipment in wooden and paper boxes, weighing up to 50 pounds and containing from one-half dozen to a gross of small packages. The smaller paper boxes are packed in crates. The carload shipments weighed from 50,000 pounds to 54,000 pounds, and moved from Perth Amboy to Jersey City over the Pennsylvania.

From February 1, 1917, to December 30, 1919, the official classification, Agent Collier's I. C. C. No. 44, which governed the shipments, contained the following provisions:

**PETROLEUM OR PETROLEUM PRODUCTS, INCLUDING COMPOUNDED OILS OR GREASES
HAVING A PETROLEUM BASE.**

Petrolatum or petrolatum preparations, such as cosmoline, densoline, litholine, petroleum jelly, petrolina or vaseline. (See Note 6.)

	L. C. L.	C. L.
In glass or earthenware, packed in barrels or boxes-----	1	
In metal tubes in barrels or boxes-----	2	
In metal cans in crates-----	2	
In wooden pails or tubs-----	2	
In iron or steel pails-----	3	
In metal cans in barrels or boxes-----	2	
In kits-----	3	
In bulk in barrels-----	3	
In packages named C. L. minimum weight 30,000 lbs-----		5
In tank cars-----		5

Note 6. Petroleum oil, petrolatum or petrolatum preparations, in glass or earthenware or in metal tubes prepared and represented as a remedy, medicine or lubricant for the human body will be rated under the specification for medicines N. O. S.

On the latter date these provisions were carried forward in official classification, Agent Collier's I. C. C. No. 45, with the exception that "n. o. i. b. n." was inserted in the note after the word "Oil" and in lieu of "N. O. S." after the word "Medicines." Medicines not otherwise indexed by name were rated third class. From 1907 to March 1, 1920, the fifth-class rates were assessed on complainant's shipments. In March, 1920, complainant was notified that the third-class rates applicable on medicines, not otherwise indexed by name, should have been collected on all shipments since February 1, 1917, and additional charges to that basis were assessed and collected.

Complainant contends that although vaseline is represented and used as a medicine, it is also used for other purposes; that vaseline was specifically indexed in the classification and a fifth-class rating provided therefor; that it could not be taken out of that classification by the general description in the note, and that even though it is a petrolatum preparation, yet the name "vaseline" has acquired

a distinct identity, so that the general description “petrolatum preparations” used in the note does not describe the product with sufficient definiteness to make the third-class rating applicable.

In resisting complainant’s contention that the fifth-class rates were applicable, defendants urge that as vaseline is a medicine, it should have been accorded the medicine rate and that it is improper, from a classification standpoint, to apply the petrolatum rating to this article, which contains various percentages of chemicals.

This is not, as urged by complainant, the providing of different ratings on the same article based solely on the use to which it is put. In *Andrews Soap Co. v. P., C. & St. L. Ry. Co.*, 4 I. C. C., 41, the commission said:

When a manufacturer describes his article to the public for the purpose of making a market for it, he also so describes it for purposes of carriage, and it seems as reasonable that the carrier should have the right to accept the manufacturer’s representation concerning his product as that the public should be influenced by it in the purchase of the article.

In *Standard Oil Co. v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 598, we held that a mineral oil refined from petroleum and used as an intestinal lubricant in the alleviation and treatment of constipation, a liquid petrolatum, was not entitled to rates applicable on petroleum oils, but was properly included within the classification description of “patent or proprietary medicines,” to which a second-class rating was applicable.

It is not denied by complainant that vaseline in glass or earthenware or in metal tubes is prepared and represented as a remedy, medicine, or lubricant for the human body. It is a petrolatum preparation, and the naming of vaseline in the description is not the designating of a separate commodity, but illustrative of what are included as petrolatum preparations. The note providing that all petrolatum preparations when prepared and represented as a remedy or medicine will be subject to medicine ratings is referred to in the item covering vaseline and sufficiently provides for the higher rating.

The following statement compiled from complainant’s exhibits shows the earnings on the traffic concerned during Federal control under the third-class and fifth-class ratings.

	Rate.	Ton-mile earnings. ¹	Car-mile earnings. ²
	Cents.	Cents.	Cents.
Jan. 1, 1918 to June 24, 1918:			
3d class.....	7	5.3	145
5th class.....	5	3.8	103
June 25, 1918 to March 1, 1920:			
3d class.....	17	13	353
5th class.....	9	6.9	186

¹ Based on distance of 26 miles. ² Based on average loading of 27 tons per car.
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Defendants urge that the movement was over an expensive part of the Pennsylvania's line and that the rates from Perth Amboy to Jersey City are on a subnormal basis as compared with class rates for substantially similar distances between various other points in the States of Pennsylvania and New York.

We find that the third-class rates were legally applicable to complainant's shipments, and were not unreasonable. The complaint will be dismissed.

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No. 12334.
FREEMAN GRAIN COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted September 26, 1921. Decided May 1, 1922.

Charges on wheat, in carloads, from Lucas, Kans., inspected at Salina, Kans., and diverted to points in California, found to have been illegal. Reparation awarded.

Thomas H. Lee for complainant.

J. M. Souby, John F. Finerty, H. A. Scandrett, and Fred W. Heid for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner.

Complainant is George Freeman, formerly dealing in grain at Salina, Kans., under the firm name of Freeman Grain Company. He alleges that the combination rates charged on nine carloads of wheat, aggregating 814,407 pounds, shipped between September 26, 1919, and January 15, 1920, from Lucas, Kans., to Salina for official inspection, thence diverted to South Vallejo and Stockton, Calif., were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded the joint through rates. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

Lucas is 56 miles northwest of Salina on a branch of the Union Pacific, extending a short distance north from the latter point and then westward through Colby, Kans., practically paralleling the main line and connecting with it again at Oakley, Kans. The shipments were originally consigned by complainant to himself at Salina under order-notify bills of lading. Upon arrival at Salina, which is the most western point in Kansas on the Union Pacific at which official grades on wheat may be obtained, the shipments were inspected by a representative of the Kansas State Grain Department, who furnished complainant certificates showing as to each car the grade and weight of the wheat. The inspection having developed that the wheat was of the grade which complainant had contracted

to supply his customers at South Vallejo and Stockton, exchange order-notify bills of lading were obtained and the shipments forwarded over the Union Pacific to Ogden, Utah, thence Southern Pacific to the California points. Charges were collected at the ultimate destinations based on combination rates of 73 cents, composed of 9 cents to Salina and 64 cents beyond, plus \$5 per car for reconsigning.

During the entire period of movement a tariff to which both of the carriers participating in the transportation were parties, named a joint rate of 64 cents from Lucas and other points in Kansas and in other States, to various points in California, including South Vallejo and Stockton. The rate was not restricted in its application to any particular route. The tariff provided that shipments taking the rates named therein would be subject to the terminal charges, allowances, and privileges, including inspection and reconsignment, authorized by tariffs of the individual carriers parties thereto. The tariffs of the Union Pacific in effect when the shipments moved provided that carload shipments of grain might be stopped for official inspection at "directly intermediate" stations on its lines west of Leavenworth and Kansas City, Kans., and reforwarded on original waybills within the free time allowed without charge in addition to the rate. Prior to December 6, 1919, demurrage constituted the only additional charge on shipments detained at the inspection point after the free time had elapsed; effective on that date a further charge of \$2 per car was established. No reconsignment charge was authorized on shipments of grain inspected and diverted under the rules referred to. The charge of \$5 per car for reconsigning was therefore an overcharge. The record fails to disclose whether or not demurrage accrued on any of the shipments. From the fact that none was collected it would appear that in each instance the inspection was accomplished and the shipment ordered forward within the free time allowed.

It is not disputed that normally traffic from Lucas to western points moves through Colby.

It is contended for defendant that the 64-cent joint rate was not applicable under the inspection and reconsigning rules referred to for the reason that Salina is not "directly intermediate" from Lucas to the points of ultimate destination, the distances by way of Salina being 78 miles greater than those over the branch line through Colby. There was nothing in the tariff naming the joint rate which would have precluded complainant from routing the shipments through Salina had they been billed direct from Lucas to the California points. As was said in *Van Dusen Harrington Co. v. C., M. & St. P. Ry. Co.*, 47 I. C. C. 59:

If it was defendants' purpose to restrict the application of the joint rate to any particular route and the reconsigning privileges authorized in connection therewith to any particular point, it should have been done by clear and unequivocal language.

Salina being directly intermediate between points of origin and destination via the route of movement, these shipments were entitled to the inspection privilege at that point without additional charge. After these shipments moved the rules of the Union Pacific governing inspection and reconsignment were amended to provide specifically that Salina would be regarded as directly intermediate with respect to this traffic.

While the shipments were sold at prices f. o. b. shipping point, it appears that complainant agreed to assume any charges in excess of those accruing at the 64-cent joint rate, and subsequently reimbursed his customer in the sum of \$590.12.

We find that the charges collected were illegal to the extent that they exceeded those which would have accrued at the applicable rate of 64 cents per 100 pounds; that complainant George Freeman made the shipments as described, and paid and bore that portion of the charges thereon as hereinabove shown, and found to have been illegal; that he was damaged thereby and is entitled to reparation, with interest. Complainant should submit a statement in accordance with Rule V of the Rules of Practice which should include the reconsignment charges herein found to have been illegal.

POTTER, *Commissioner*, dissenting:

I dissent because I do not concur in the conclusion of the report that Salina is a "directly intermediate" station within the meaning of the tariffs in effect when the shipments moved from Lucas to the points of ultimate destination. The conclusion of the report seems to be founded on the proposition that there was "nothing in the tariff naming the joint rate which would have precluded shippers from routing the shipments through Salina had they been billed directly from Lucas to the California point." Based on the assumption that the shipper had the right to route the shipments through Salina, the report concludes that, Salina being a directly intermediate point on that route, the shippers were entitled to the inspection privilege without additional charge. I do not concur in the conclusion that the shipper had the right to route through Salina. In my opinion the only route available to him as a matter of right was the short route through Colby. Salina not being intermediate on that route, it was not an intermediate station within the meaning of the tariff and, therefore, the shipper was not entitled to the inspection privilege.

Lucas is on a branch line running generally parallel to the main line, which it leaves at Salina and to which it returns at Oakley. This branch line is 225 miles long. Its greatest distance from the main line at any point apparently is about 21 miles. Lucas is 56 miles west of Salina. The short-line distance from Lucas to Oakley through Colby is 78 miles less than through Salina. It is not disputed that normally traffic from Lucas moves through Colby. This is the natural and economical route. While it is true that the joint rate of 64 cents from Lucas and other points in Kansas to various points in California was not restricted in its application to any particular route, this fact did not give the shipper the right to route over the longer and more expensive route. The route through Salina in effect required a back haul and a movement out of line. If Lucas were located on the direct line between Salina and Oakley, it could not be urged that Salina was an intermediate station. It is no more an intermediate station because Lucas happens to be on a branch line practically parallel to the main line. In my judgment the right of a shipper to route his traffic does not give him the right to select the longer of two routes operated by the same carrier. Where mileage making up different routes is operated by different carriers, the publication of the rates by the carriers is a holding out that both routes are available. Where both routes are owned by the same carrier, a publication of a tariff applicable generally between points of origin and destination is not a holding out that both routes are available to the shipper. In other words, in my judgment, the shipper's right to route exists only where the lines of different carriers are used and held out as available, and does not exist where both routes are owned by the same carrier or carriers. It may well be that the carriers controlling the short-line route from Lucas to the California points of destination, might own lines together, making a route via Kansas City, St. Paul, Seattle, and San Francisco. In such an event the logic of the report would permit a shipper to so route his traffic. If he is at liberty to select a route 78 miles longer than a shorter one, he would have the same right seemingly to select a route 500 miles longer. Clearly, the purpose of connecting the branch line on which Lucas is located with the main line at Oakley was to permit westbound traffic from branch-line points to move through Oakley as was the purpose to permit eastbound traffic to move through the connection at Salina. Considering only westbound traffic, the branch-line mileage east of Lucas would never have been constructed. It being obvious that it was not constructed for such a purpose, the shipper would have no right to require the movement of westbound traffic over it. Therefore the Salina route was not legally available to

the shipper and Salina can not be regarded as an intermediate station.

The subsequent amendment naming Salina as an intermediate point can not affect our conclusion. The fact that the rule was amended so as to specifically name Salina as an intermediate point shows that prior to the amendment Salina was not regarded as an intermediate point, and that the Salina route was not held out as open. We are to consider only the conditions that existed when the traffic moved. A carrier's duty is one thing. What it may voluntarily elect to do, is quite another thing. The extension of the privilege to Salina may have been a proper and even a generous thing to do. There is much that a carrier can do voluntarily that we have no right to require. Taking a position as from a certain date implies no duty that the carrier should have taken the same position at an earlier date.

INVESTIGATION AND SUSPENSION DOCKET No. 1472.

PETROLEUM AND ITS PRODUCTS FROM SHREVEPORT
AND RELATED POINTS TO LOWER MISSISSIPPI RIVER
POINTS.

Submitted March 15, 1922. Decided May 2, 1922.

Proposed reduced proportional rate on petroleum and its products from the Shreveport, La., group to Baton Rouge, La., and Natchez and Vicksburg, Miss., found justified for application on shipments to certain States in southeastern territory. Suspended schedules, so far as found not justified, ordered canceled, without prejudice to right of respondents to establish the rate found justified.

A. L. Burford for Louisiana & Arkansas Railway Company; *Allen Rendall* for Louisiana Railway & Navigation Company; and *D. Lynch Younger* for Vicksburg, Shreveport & Pacific Railway Company, respondents.

H. G. Herbel, J. H. Ranhman, jr., J. C. Gutsch, George T. Atkins, A. J. Lehmann, and *B. H. Stanage* for protestants.

G. S. Gibson for Shreveport Chamber of Commerce; *Ed. P. Byars* for Fort Worth Freight Bureau, Fort Worth Chamber of Commerce, and Western Petroleum Refiners Association; *F. C. Clark* for White Oil Corporation; and *J. P. Schneider* for Arkansas Petroleum Association.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, CAMPBELL, AND COX.

BY DIVISION 3:

By schedules filed to become effective January 11, 1922, and at later dates, the Louisiana & Arkansas, Louisiana Railway & Navigation Company, and Vicksburg, Shreveport & Pacific, proposed to reduce from 19 to 14 cents the proportional rate on petroleum and its products, except crude and fuel oils, in carloads from the Shreveport, La., group points, to Natchez, Miss., Baton Rouge, La., and Vicksburg, Miss., their respective Mississippi River crossings. The Louisiana & Arkansas restricted the application of the proposed rate to traffic having destinations in Mississippi, Alabama, Florida, Georgia, North Carolina, and South Carolina, hereinafter called southeastern territory. The two other respondents propose to apply the reduced rate on traffic to points beyond to which no joint rates are

published. Upon protest of several southwestern carriers, namely, the Chicago, Rock Island & Pacific, Kansas City Southern, Missouri, Kansas & Texas, Missouri Pacific, St. Louis-San Francisco, and St. Louis Southwestern, the operation of the schedules was suspended until May 11, 1922. The Shreveport Chamber of Commerce and other commercial organizations and shippers appeared at the hearing in support of the proposed reduction. Rates are stated in cents per 100 pounds.

The Shreveport group includes points in Louisiana within a radius of 35 or 40 miles of Shreveport, but most of the refining is done at or near Shreveport. Oil in large quantities was first developed in this section of the country at points along the Gulf coast near Beaumont, Tex. Both refined and crude oils originally moved by barge from Port Arthur and Beaumont, Tex., to New Orleans. To compete with the barge lines, the carriers on April 24, 1906, established a proportional rate of 12 cents from those points to New Orleans. Upon the discovery of oil in northwestern Louisiana the 12-cent rate was published from the Shreveport group, and, from time to time, as oil was discovered in northern Texas and at other Texas points, the Shreveport group was applied therefrom as a blanket rate. This blanket embraces substantially all stations in Texas common-point territory, hereinafter referred to as Texas points. The proportional rate, as increased June 25, 1918, to 14 cents, and August 26, 1920, to 19 cents, applies from southern Texas to New Orleans and Baton Rouge, and from northern Texas to Vicksburg and Natchez. The local rate on refined oil from the Shreveport group to the river crossings is 22.5 cents. The proportional rate on crude and fuel oils to these points was recently reduced to 12.5 cents. To New Orleans the export rates on refined, crude, and fuel oils from Oklahoma and Kansas points, and from Texas common-point territory generally west of and including Sabine, Orange, Corsicana, Dallas, and Denison, were reduced on January 5, 1922, to 24.5 cents; and from the Shreveport group, and Texas common points east of those just described, the rate was reduced on January 24 and March 12, 1922, to 16.5 cents. Prior to January 5, 1922, the export rates then reduced were higher on refined oil than on crude and fuel oils, and there was some difference in the rates from the points now taking the 24.5-cent rate; from the Shreveport group, and from the Texas points indicated as taking the same rate, the rate prior to the dates given was 19 cents and applied alike on refined, crude, and fuel oils.

The distances from Shreveport near the eastern edge of the origin blanket from which the proportional rate applies, to Wichita Falls
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and San Antonio, Tex., on the western edge, are 331 and 402 miles, respectively. From Shreveport to Vicksburg the distance is 172 miles. The existence of this large blanket and the present rate adjustment have been a source of concern to the carriers for some time, and numerous conferences have been had in an effort to correct the situation.

In November, 1921, the majority of the southwestern carriers agreed to an adjustment which contemplated the continuation of the present 19-cent proportional rate from Shreveport, including the Houston and Beaumont group, to the lower river crossings, and the establishment of a rate of 25.5 cents from central and northern Texas points. The Louisiana & Arkansas would not agree to this plan and published the reduced rate under suspension, which action was followed by the Louisiana Railway & Navigation Company and the Vicksburg, Shreveport & Pacific.

The Vicksburg, Shreveport & Pacific at the hearing opposed the proposed reduction, stating that it published the 14-cent rate solely to meet the action of the Louisiana & Arkansas. It says that the proposed reduction will make necessary a graduation in rates from points west, and possibly cause the establishment of equal rates from the Beaumont, Port Arthur, and Houston district, resulting in a general reduction. It insists that if the reduction be permitted to become effective, the application of the proposed rate should not be restricted to southeastern territory, but should apply to all points beyond.

The Louisiana & Arkansas and Louisiana Railway & Navigation Company, hereinafter referred to as respondents, introduced evidence in justification of the proposed reduction, and asked that its application be restricted to shipments destined to the Southeast. They contend that Shreveport should be given lower rates in recognition of the shorter distances; that the proposed rate was designed to help the Shreveport refiners meet increasing competition by water in the Southeast; that as a proportional rate it is not too low; and that the proposed reduction will not result in undue prejudice to refiners in Texas and Oklahoma. They say that the reduced rate is necessary in order to create any considerable volume of tonnage, as under prevailing conditions there is practically no movement from Shreveport into southeastern territory. They contend that the present rates are unfair to Shreveport refiners, who are at a rate disadvantage with Texas refiners at many points, and show that Shreveport shippers pay higher rates than the latter to the Pacific coast, while, to the Southeast, northern Texas shippers have the same rates as Shreveport.

The following table submitted by respondents shows the earnings under the present and proposed rates, as compared with earnings under the present rate from other points in the blanket:

From—	Rate.	To Vicksburg.		To Natchez.		To Baton Rouge.		To New Orleans.	
		Dis- tance. ¹	Reve- nue per ton- mile.	Dis- tance. ¹	Reve- nue per ton- mile.	Dis- tance. ¹	Reve- nue per ton- mile.	Dis- tance. ¹	Reve- nue per ton- mile.
Shreveport:	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Mills.</i>
Present.....	19	192	20	206	18.4	241	15.5	321	11.6
Proposed.....	14	192	14.6	206	14	241	11.5	.....	.....
Wichita Falls.....	19	523	7.3	543	7	.....	.....	.....	.....
Fort Worth.....	19	414	9.4	434	8.9	.....	.....	.....	.....
Waco.....	19	423	8.9	443	8.5	.....	.....	.....	.....
Dallas.....	19	373	10.1	393	9.7	.....	.....	.....	.....
Mexia.....	19	397	9.5	417	9.1	.....	.....	.....	.....
San Antonio.....	19	.....	.....	.....	.....	497	7.6	567	6.7
Houston.....	19	.....	.....	.....	.....	292	13	366	10.5
Beaumont.....	19	.....	.....	.....	.....	208	18.2	278	13.6

¹ 20 miles allowed for constructive mileage at Mississippi River crossings.

Shreveport refiners compete in the Southeast with refiners at lower Mississippi River points. They contend that the present rate places them at a disadvantage with the Mississippi River refiners and, in addition, that they are subjected to competition on an equal basis in that territory with the Texas refiners. They say that an increase in the rates from Texas points would not rectify this situation, because the existing preference in favor of the Mississippi River refiners would remain. Their witness testified that there has been an increased activity in drilling, with a potential surplus of crude oil but a decreased production because of no market; that storage facilities are filled to the utmost; and that the refiners are operating at only one-third capacity. The Mississippi River refineries receive crude Mexican petroleum in large quantities by water; ship the refined product to various ports, including Mobile, Ala., Jacksonville, Fla., Charleston, S. C., and Brunswick, Ga., and distribute from these ports by rail on short hauls at lower total charges than the direct all-rail rates. As a result of this situation, together with the rate adjustment herein considered, the Shreveport refiners claim that they are denied access to southeastern territory, their logical market, where, prior to the general increases of 1920, they sold 40 per cent of their output. Comparison is made of the joint or combination rates to representative southeastern points from Shreveport with rates from New Orleans and Baton Rouge to the same destinations. This comparison shows earnings per ton-mile under the rates from New Orleans and Baton Rouge, for an average haul of 600 miles, of 18.4 mills, as compared with earnings of 19.9 mills

under present rates from Shreveport, and 18.3 mills under the proposed rates, for an average distance of 736 miles.

The northern Texas refiners admit that Shreveport is entitled to a lower rate than northern Texas points and, fearing as an alternative that their rates will be increased, support the proposed reduction. The southern Texas refiners, while favoring the reduction, say that a corresponding reduction should be made in their rate to New Orleans.

Protestants' position is that the present 19-cent rate from Shreveport, which includes the transfer charge at the river, is reasonable; that the proposed rate of 14 cents and the present rate of 19 cents from northern Texas are too low; that the proposed reduction would cause reductions from Texas fields served by them, and disturb the entire adjustment of oil rates from Texas and Oklahoma to points in southeastern territory as well as to points in central and trunk-line territories, and in general would demoralize rates on this traffic. These carriers do not participate in transportation from Shreveport to the lower Mississippi River crossings, and are interested in the proposed rate only as the reduction would affect rates in which they participate. They point out that the production of oil in both Texas and Oklahoma is much greater than in Louisiana, and that Texas and Oklahoma refiners must have an outlet for their surplus. They say that the earnings under the present 19-cent rate from Texas are much less than their average earnings on all traffic; that oil furnishes about 20 per cent of their tonnage and revenue; and that a reduction from Texas would therefore have a serious effect upon their revenues.

No attempt was made to justify the application of the proposed rate on shipments to points in central and trunk-line territories. Protestants contend that the effect of the reduction to those territories upon the adjustment from Oklahoma would be disastrous. The respondents generally concede this, but claim that if the proposed reduction were restricted to apply only on traffic to the Southeast it would not break down the rate adjustment to the other territories.

Protestants illustrate the effect of the proposed reductions upon rates to central and trunk-line territories by comparing the combination rates thereto from Shreveport, based on Vicksburg, under the present and proposed rates, with the rates from Texas and Oklahoma refineries. In the table below, Tulsa, Okla., is used as representative of protestants' comparisons, to which we have added the lowest combination rates from Shreveport, generally based on the Ohio River:

To—	From Tulsa, Okla., East St. Louis, Ill., combi- nation.	From Shreveport, La.		
		Vicksburg combination.		Lowest combina- tion. ¹
		Present.	Proposed.	Present.
Cincinnati, Ohio.....	57	50.5	45.5	^a 45.5
Indianapolis, Ind.....	55	53	48	^a 52.5
Dayton, Ohio.....	57.5	61	56	^a 56.5
Pittsburgh, Pa.....	67.5	69	64	^a 64
Detroit, Mich.....	62	67	62	^a 62.5
New York, N. Y.....	80.5	75.5	70.5	^a 75.5

¹ Rates apply via Mississippi River crossings, St. Louis and south.
² Joint rate to Cincinnati, proper; when far beyond, 42 cents.
³ Combination on Jeffersonville, Ind.
⁴ Combination on Cincinnati.
⁵ Combination on Vicksburg.

Protestants point out that the rates to many destinations in central territory from Oklahoma refineries are already higher than from those in northern Texas, and one reason for the proposal to increase the latter was to equalize them with Oklahoma rates. The rates from Shreveport to destinations in central and trunk-line territories are less, in many instances, than from Oklahoma points. The proposed reduction would increase Shreveport's advantage on traffic to those destinations and would tend to break down the adjustment from Oklahoma, for the reason that if the proposed rate became effective it would have a direct influence on rates from the Southwest to the East applicable through Memphis, Tenn., St. Louis, Mo., and other Mississippi River crossings.

Respondents contend that the proposed reduction as applicable on shipments to points in southeastern territory would not be prejudicial to refiners in Oklahoma, while protestants, on the other hand, say that rates from Shreveport are already lower to the Southeast and that the reduction will widen the spread. The average distance from Cushing, Blackwell, and Tulsa, Okla., to representative southeastern points is 1,055 miles, and the average ton-mile earnings on the through rates are 15.2 mills. The average distance from Shreveport to the same destinations is 736 miles, with average ton-mile earnings on the through combination rates, resulting from the use of the proposed proportional rate as a factor, of 18.3 mills. As a rule, shipments from Oklahoma to southeastern points move through Memphis, and from Shreveport through either Vicksburg or Natchez. From the Oklahoma points named the rate to Memphis is 28 cents for an average distance of 487 miles, with average ton-mile earnings of 11.4 mills, while the proposed rate from Shreveport to Vicksburg and Natchez would earn 14.6 and 14 mills, respectively.

The following table, compiled from the record, compares distances, rates, and earnings to representative southeastern destinations from

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Baton Rouge, New Orleans, and representative northern Texas and Oklahoma points with through rates resulting from the use of the proposed rate as a factor from Shreveport:

From—	To Birmingham, Ala.			To Pensacola, Fla.			To Atlanta, Ga.		
	Rate.	Dis- tance.	Ton- mile earn- ings.	Rate.	Dis- tance.	Ton- mile earn- ings.	Rate.	Dis- tance.	Ton- mile earn- ings.
	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>
Blackwell, Okla.....	67.5	837	16.1	52.5	1,038	10.1	73	1,005	14.5
Cushing, Okla.....	67.5	745	18.1	52.5	971	10.8	73	913	15.9
Tulsa, Okla.....	67.5	694	19.5	52.5	917	11.4	73	864	16.9
Shreveport, La.....	58.5	465	25.1	36	549	13.1	59	633	18.6
Baton Rouge, La.....	47	416	22.6	24.5	322	15.2	47.5	372	16.6
New Orleans, La.....	47	355	25.4	24.5	243	20.1	47.5	433	18.5
Fort Worth, Tex.....	63.5	684	18.5	41	768	10.6	64	852	15
Wichita Falls, Tex.....	63.5	799	16	41	883	9.2	64	968	13.2

From—	To Raleigh, N. C.			To Charleston, S. C.		
	Rate.	Dis- tance.	Ton-mile earnings.	Rate.	Dis- tance.	Ton-mile earnings.
	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>
Blackwell, Okla.....	76	1,440	10.5	77	1,231	12.5
Cushing, Okla.....	76	1,348	11.2	77	1,139	13.5
Tulsa, Okla.....	76	1,297	11.7	77	1,083	14.1
Shreveport, La.....	68	1,063	12.8	63	900	14
Baton Rouge, La.....	56.5	973	11.6	51.5	759	13.5
New Orleans, La.....	56.5	894	12.6	51.5	680	15.6
Fort Worth, Tex.....	73	1,293	11.2	68	1,119	12.1
Wichita Falls, Tex.....	73	1,408	10.3	68	1,234	11

Protestants do not contend that the proposed rate is unremunerative. They do contend that both the present rate from northern Texas and the proposed rate from Shreveport are relatively too low, and submit comparisons of the intrastate scale on crude oil in Oklahoma and Arkansas, rates for similar distances from Vicksburg and Baton Rouge to points in southeastern territory, and rates for similar distances in central territory. On the other hand, respondents contend that the proposed rate, as reduced to the level of the rate in force prior to August 26, 1920, is about on a proper level as a proportional rate. In comparison, they instance the 24.5-cent export rate from Kansas and Oklahoma to Gulf ports, and show an average distance from representative points of 874 miles, and average earnings of 7.2 mills per ton-mile. The proportional rate from Vicksburg to Louisville, Ky., 600 miles, is 25.5 cents, earning 8.5 mills; and to Cincinnati, 714 miles, 31.5 cents, earning 8.8 mills. The joint rate from Shreveport to Cincinnati, 815 miles, is 45.5 cents; to Louisville, 701 miles, 38 cents; to Chicago, Ill., 850 miles, 42.5 cents; and to Jeffersonville, Ind., 705 miles, 38 cents. In comparison with these, the combination rates from Shreveport

to southeastern destinations which would result from the use of the proposed 14-cent rate as a factor do not seem unduly low.

All parties, respondents, protestants, and shippers alike, agree that Shreveport should have a rate lower than northern Texas, but they disagree as to the basic rate. The present adjustment means the continuation of a situation unfair to Shreveport shippers, while the proposed rate, when applied to shipments to southeastern territory, does not appear to be prejudicial to shippers in Texas or Oklahoma; in fact, it seems to be well aligned with the rates from those points. The moving cause of the protest by the southwestern carriers is the fear that the reduction will spread into Texas, and further that they will be precluded from increasing the Texas rates. The proposed rate does not seem to be unreasonably low.

We find that respondents have justified the proposed reduced rates in so far as they would apply on traffic destined to points in southeastern territory, to wit: Mississippi, Alabama, Florida, Georgia, North Carolina, and South Carolina; but have not justified the reduction for application on shipments to destinations in other territories. An order will be entered vacating our order of suspension in so far as it applies to the suspended schedules of the Louisiana & Arkansas Railway Company, but requiring the cancellation of all other schedules the operation of which was suspended in this proceeding, without prejudice to the right of respondents Louisiana Railway & Navigation Company and Vicksburg, Shreveport & Pacific Railway Company to establish upon not less than five days' notice the rates herein found justified.

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INVESTIGATION AND SUSPENSION DOCKET No. 1416.

STORAGE-IN-TRANSIT RULES AT MINNESOTA TRANSFER ON IMPORT TRAFFIC FROM PACIFIC COAST PORTS.

Submitted March 31, 1922. Decided May 5, 1922.

Proposed cancellation of storage-in-transit arrangement at Minnesota Transfer, Minn., on import traffic from Pacific coast ports destined, with certain exceptions, to all points south of the Ohio and Potomac Rivers and east of the Mississippi River found not justified. Suspended schedules ordered canceled.

W. N. McGehee and William Burger for respondents.

Clapp & Macartney and Charles E. Elmquist for protestants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

BY DIVISION 2:

By schedules filed to become effective October 8, 1921, respondents propose to cancel the storage-in-transit arrangements at Minnesota Transfer, Minn., and other points, on import traffic moving from the Pacific coast ports to all points south of the Ohio and Potomac Rivers and east of the Mississippi River, except points located on the Mississippi and Ohio Rivers and certain points on the Chesapeake & Ohio Railway, leaving in effect on such traffic when stored in transit combination rates which are higher than the joint import commodity rates at present applicable from the ports to ultimate destinations. Upon protest of the Central Warehouse Company of St. Paul, Minn., the operation of the schedules was suspended until February 5, 1922, and their effective date has subsequently been voluntarily postponed by respondents until June 5, 1922. The Association of Importers & Distributors of Chinese & Japanese Floor Coverings was represented at the hearing in opposition to the proposed schedules.

Approximately 60 per cent of the traffic imported from the Orient through the Pacific coast ports is stored at Minnesota Transfer, from which point it is distributed to jobbers and retailers throughout the territory to the south and east. The principal commodities here considered are common matting and rice-straw rugs. During 1921 the movement of these commodities through Minnesota Transfer

amounted to 173 carloads, of an average weight of 30,000 pounds, of which about 15 per cent was distributed to points in the Southeast. The proportion of the total imports of these commodities into the United States stored at Minnesota Transfer has practically doubled since 1918. In that year about 50 per cent of the traffic moved through the Gulf and Atlantic ports. During the period from 1914 to 1919 a considerable tonnage of imported tea, toys, and china-ware was also stored at Minnesota Transfer, but since that time the movement of these commodities through the Pacific ports has become negligible, due, it is said, to the reduced ocean rates to the other ports. The storage facilities at Minnesota Transfer are owned and operated by one of the protestants and are valued at \$1,200,000. They have a capacity of 7,000,000 cubic feet. Storage-in-transit arrangements are also in effect at this point on certain domestic commodities, among which are lumber, grain, apples, pears, and agricultural implements. Imported rice-straw rugs compete with domestic grass rugs which are manufactured at Green Bay and Oshkosh, Wis., and St. Paul, Minn. The average landed price of the former is about 47 cents per square yard as compared with 62 cents, the manufacturing and selling cost of the domestic rugs. However, it is stated that the advantage which the imported commodity has in price is offset by its inferior quality.

The storage-in-transit arrangement at Minnesota Transfer was established by the Great Northern and Northern Pacific in 1906 because of their limited storage facilities at the Pacific coast ports. The average period over which goods are stored is from 2 to 4 months, although on most of the traffic the maximum time allowed is 18 months. No charges in addition to the through rate are assessed by the carriers, the shippers paying the storage company for its service. Other western lines subsequently established similar arrangements at Chicago, St. Louis, and other gateways but the bulk of the import traffic stored in transit continued to move via Minnesota Transfer. Shipments move into that point over the Great Northern, Northern Pacific, or Chicago, Milwaukee & St. Paul in carload lots, but as most of the outbound movement is less than carload, the less-than-carload rate is applied from the Pacific coast ports to final destination. The traffic is very desirable to the carriers named, as their heavier loaded movement is eastbound and the movement of this traffic in carloads to a central distributing point at the termini of their lines, where it is unloaded, enables them to conserve their equipment and revenues. The present less-than-carload import commodity rate on matting and straw rugs from the Pacific coast ports to all points east of the Colorado common points is \$2.665 per 100 pounds, which is based on the rate of \$1.50 in effect prior to Federal control

as increased pursuant to the subsequent general increases. The blanket import rates from the Pacific ports originally did not apply to southeastern territory but on July 1, 1918, were extended to that territory by the director general. It should be noted that if the existing storage-in-transit arrangement is canceled to the extent proposed by the southern carriers the blanket import rate will still apply on traffic moving direct from the Pacific ports to the destination territory here considered.

The following table shows the combination less-than-carload rates per 100 pounds that would apply on traffic stored at Minnesota Transfer and subsequently reshipped to representative southern destinations if the proposed schedules became effective, together with a comparison of the rates from New Orleans and the domestic producing points in Wisconsin and Minnesota hereinbefore mentioned.

To—	From Pacific coast ports.		From New Orleans.		From domestic producing points.	
	Dis- tance. ¹	Rate.	Dis- tance	Rate.	Dis- tance. ¹	Rate.
	<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>	
Atlanta, Ga.....	2,906	\$4.23	493	\$1.675	990	\$3.01
Augusta, Ga.....	3,077	3.915	638	1.675	1,160	3.01
Macon, Ga.....	2,933	4.23	513	1.675	1,080	3.01
Birmingham, Ala.....	2,825	4.03	355	1.52	910	2.855
Chattanooga, Tenn.....	2,768	3.855	498	1.675	850	2.525
Knoxville, Tenn.....	2,837	3.855	609	1.78	820	2.525
Columbia, S. C.....	3,030	3.81	721	1.80	1,110	2.98
Spartanburg, S. C.....	2,936	3.81	685	1.94	1,020	2.98

¹ Average.

The rate on matting and straw rugs from the Orient to Seattle is said to be 75 cents per 100 pounds, and to New Orleans and New York \$7 per cubic ton, which is equivalent to about 97 cents per 100 pounds.

The burden of justifying the proposed schedules was assumed by the Louisville & Nashville and Southern in behalf of the southeastern carriers, hereinafter called respondents, at whose request they were filed. They urge that an arrangement whereby the carriers assist a certain class of shippers in marketing their products by permitting storage in transit under the through rate is not a commercial necessity in the sense that milling or other treatment in transit is necessary in the case of commodities like lumber, grain, or cotton. Respondents do not permit the storage of general merchandise in transit at any point on their lines, although they have been importuned to establish such arrangements at Atlanta, Ga., and other important jobbing points in the South. Their position is that, even though in view of the opinion of the Supreme Court in

C. R. R. Co. of N. J. v. United States, decided December 5, 1921, generally referred to as the *Creosoting-in-Transit Case*, their participating in the arrangement at Minnesota Transfer does not constitute undue prejudice under the interstate commerce act, they should not be required to be a party to an arrangement which is inconsistent with their transportation policy and which enables the Pacific coast ports to minimize the disadvantage of their geographical location by building up a route via those ports to points in the South which are logically reached via ports served directly by respondents.

Protestants contend that the proposed schedules would unduly prefer southern border points such as New Orleans, La.; Natchez, Vicksburg, and Greenville, Miss.; Memphis, Tenn.; Cairo, Ill.; Evansville, Ind.; Louisville, Ky.; Cincinnati, Ohio; and Norfolk, Va., which are excepted from the application of the suspended tariffs and would continue to enjoy the benefits of the transit arrangement, and unduly prejudice points in the vicinity of the border points, such as Jackson, Miss.; Birmingham, Ala.; Nashville, Tenn.; Lexington, Ky.; and Danville, Va.; to which combination rates would apply on traffic stored in transit. They further contend that the proposed schedules would result in fourth-section violations in that while the joint rates with transit would continue to apply on traffic stored in transit and subsequently moved to the border points, higher combination rates would apply on similar traffic moving to points which are intermediate via respondents' lines. Respondents assert that the rates to the border points are controlled by the so-called west-side and northern lines but express a willingness to also withdraw from the transit arrangement as to those points if we find there is merit in protestants' contentions.

Protestants state that import traffic must generally be stored somewhere after arrival and pending sale; that the existing arrangement at Minnesota Transfer affords importers a distributing point 1,900 miles nearer the principal points of consumption than the Pacific coast ports, thus expediting delivery; and that the cancellation of the arrangement on traffic moving to the Southeast would operate to the injury of established storage warehouses and reduce the territory to which importers can distribute from Minnesota Transfer and force them to carry stocks at other points in order to continue in the southern trade. It is apparent that under the present arrangement importers through the Pacific ports are able to compete in the Southeast with domestic producers as well as with importers through other United States ports, although the total transportation charges via the Gulf and South Atlantic ports are somewhat lower. Witnesses agree that the effect of the proposed schedules would be

largely to restrict the movement of import traffic to the routes via the latter ports.

Respondents call attention to the fact that prior to July 1, 1918, import traffic from the Pacific coast ports moved to points in southeastern territory on combination rates, and that as to the traffic to such points stored in transit the proposed schedules would merely restore the situation which existed prior to that date. They urge that the difference in transportation conditions in the destination territory here considered makes it proper to except it from a rule of general application. However, respondents expressly state that they do not contemplate withdrawing from the blanket import rates on traffic moving direct from the Pacific coast ports, and the service performed by them on such traffic would be identical with that which they now render on traffic stored in transit under the existing arrangement, and that which they would perform in connection with such traffic as might continue to be stored at and reshipped from Minnesota Transfer to the South on combination rates if the present arrangement is canceled. The issue here is whether respondents may properly withhold from certain destination territory in a large blanket an incidental transit arrangement which is granted in connection with import rates to every other point in such blanket. To certain destinations in the territory which it is proposed to exclude from the transit arrangement, for example, Birmingham and Mobile, Ala., blanket import rates, with the incidental transit arrangement, were in effect prior to Federal control. The fact that respondents do not permit the storage in transit of general merchandise at any point on their lines is not persuasive, for this is true, generally speaking, of every line east of the Mississippi River. The northern trans-continental lines represented in this proceeding desire the existing arrangement to continue to apply on traffic to southern territory.

We find that the proposed schedules have not been justified. An order requiring their cancellation and discontinuing this proceeding will be entered.

DANIELS, *Commissioner*, dissenting:

The proposed cancellation of the storage-in-transit practice at Minnesota Transfer is, in my opinion, justified. Storage in transit of finished commodities requiring no fabrication, alteration, or elaboration in transit, and especially for a period of 18 months, appears to me of doubtful propriety as a matter of traffic policy, and certainly an arrangement that should not be forced upon lines reaching a distant section where the practice does not prevail.

In *Conference Ruling 204* we have declared that "it is the sense of the Commission that no transit privileges should extend beyond

one year"; and only in the matter of creosoting of lumber have we modified this holding. *Conference Ruling 232*. This sole exception is based upon the time required to effect physical changes in the creosoted lumber. In the instant case the goods stored are fully finished before they go into storage.

It is not the function of a common carrier to act as a warehouseman, or to be required to become an adjunct to this business. *Kehoe v. C. & W. C. Ry. Co.*, 11 I. C. C., 166, 170; *Advances in Demurrage Charges*, 25 I. C. C., 314, 315. It is therefore hardly appropriate to force a carrier against its will to become a participant in a warehousing transit privilege, or to force it by competitive necessity to introduce the practice in a region where it does not prevail.

The contention that border points in the Southeast on the Mississippi and Ohio Rivers will still enjoy the benefit of this transit service and transit rates is without force when we consider that this matter is controlled by western and northern lines reaching with their own rails these river points, and when we also consider respondents' declared willingness to withdraw, if necessary, from further participation in this arrangement even at the river points.

The alleged violation of the fourth section in case the southeastern lines withdraw from participation in this transit is doubtful. It is illustrated only by the assumed continuance of the present transit rates to border or river points and higher rates to intermediate points by respondents' lines. But in case the southeastern lines cease to participate in the transit arrangement, their rates from Minnesota Transfer to destinations in the Southeast would be local rates, and therefore not comparable with the through rate from the Pacific ports via Minnesota Transfer or with the outbound factor thereof. *Conference Ruling 304(a)*.

There is the further reason for the cancellation of this transit arrangement that it diverts, or tends to divert, this traffic from Gulf and South Atlantic ports of entry to their prejudice and disadvantage and to the advantage of the Pacific ports. If these commodities were entered at Gulf or South Atlantic ports, the southeastern lines would obtain a haul presumably more profitable than the share of the haul they now obtain on these mattings currently stored at Minnesota Transfer.

Entry of this merchandise via Gulf ports would tend to lessen or eliminate the southeastern lines' participation in the blanket import rate with storage in transit at Pacific ports—a privilege, by the way, for which the southeastern carriers are not responsible and which they alone are powerless to remove.

There is the final consideration that the entry of this merchandise by Gulf ports would lessen the total freight, water and rail, to southeastern interior consuming points. Thus a water rate of 75 cents from the Orient to Seattle, plus rail rate of \$2.665, less than carloads, to Birmingham, or total charges of \$3.415, would be changed to a water rate of 97 cents from the Orient to New Orleans, plus a \$1.52 rail rate, New Orleans to Birmingham, or a total of \$2.49.

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No. 11174.

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA
RAILROAD COMPANY, ET AL.

Decided May 2, 1922.

Freight charges paid on nitrate of soda, in carloads, from Baltimore, Md., to Barksdale, Wis., found not borne by complainant, and reparation denied. Original report, 59 I. C. C., 570, modified.

J. P. Laffey, V. S. Thomas, and Harvey S. Farrow for complainant.

Adams Dodson and Henry Wolf Biklé for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

In our original report, 59 I. C. C., 570, we found unreasonable the rate charged on nitrate of soda, in carloads, from Baltimore, Md., to Barksdale, Wis., in August, 1918, to the extent that it exceeded 45 cents per 100 pounds. We further found that complainant made the 144 carload shipments as described and paid and bore the freight charges thereon; that it had been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate found reasonable; and that it was entitled to reparation, with interest. No order awarding reparation was entered but complainant was directed to comply with Rule V of the Rules of Practice. In the course of that compliance facts were developed of which we were apprised by complainant's attorney on January 4, 1922, as follows:

Since the hearing in the above entitled proceeding, the writer's attention has been called to the fact that our Government Claims Division was obliged to use this particular tonnage of soda in a transfer with the Navy Department and was included in a settlement with the Navy Department under the terms of which the full amount of freight as paid to the railroad had been refunded to this company.

* * * * *

In view of the above and changed circumstances, complainant believes the Commission should reopen this proceeding for the purpose of making supple-

mentary order, changing the original opinion to the extent of eliminating payment of reparation to complainant, or else permit the filing of a stipulation providing for the payment of this sum to the Navy Department who is actually entitled to the refund.

The Director General of Railroads, as agent, agrees to the setting aside of the finding that complainant was entitled to reparation but is unwilling to enter into the stipulation suggested.

We now find that the freight charges paid on the shipments described in our original report were not borne by complainant and reparation is denied. To this extent the original report is modified.

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No. 12581.¹

JOHN LUCAS & COMPANY, INCORPORATED,
v.
DIRECTOR GENERAL, AS AGENT, THE NEW YORK
CENTRAL RAILROAD COMPANY, ET AL.

Submitted November 10, 1921. Decided May 2, 1922.

Rates on talc, in carloads, from Hailesboro, Emeryville, and Talcville, N. Y., to Lucaston, N. J., found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaints dismissed.

William J. Pitt for complainant.

Parker McCollester and *Edwin A. Lucas* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation manufacturing paints and varnishes at Gibbsboro (Lucaston), N. J. By complaint filed February 28, 1921, it alleges that the rates charged on talc in carloads, shipped from Hailesboro, Emeryville, and Talcville, N. Y., to Lucaston since June 24, 1919, were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded 21 cents prior to August 26, 1920, and 29.5 cents thereafter. We are asked to award reparation and to establish reasonable rates for the future. Rates are stated in cents per 100 pounds.

Hailesboro, Emeryville, and Talcville are local points on the Oswegatchie branch of the New York Central which extends east from Gouverneur, N. Y., to Edwards, N. Y. They are 3.26, 7.72, and 11.32 miles, respectively, east of Gouverneur. Lucaston is 14 miles southeast of Camden, N. J., on the Atlantic City division of the West Jersey & Seashore.

Talc is a substance similar to soapstone. It is ground before being shipped and is used by complainant in the manufacture of paint. On the shipments which moved prior to February 28, 1920, charges were collected at the applicable combination rates, composed of a pro-

¹ This report also embraces No. 12657, Same v. New York Central Railroad Company et al.

portional commodity rate of 2 cents to Gouverneur and the sixth-class rate beyond. The sixth-class rate from Gouverneur to Lucaston was 31.5 cents prior to December 31, 1919, when it was reduced to 29.5 cents. Effective February 28, 1920, a joint commodity rate of 27.5 cents was established, which, on August 26, 1920, was increased to 38.5 cents. Four of the shipments which moved after February 28, 1920, were overcharged and one was undercharged.

The sixth-class rates from Gouverneur to Lucaston and Philadelphia, Pa., were 25 and 20 cents, respectively, prior to June 25, 1918. On that date, under General Order No. 28 of the Director General of Railroads, the rates were increased to 31.5 and 25 cents, respectively. On December 31, 1919, the latter rates were reduced to 29.5 and 24.5 cents, respectively, thus restoring the former spread of 5 cents. As a result of the general increase of 1920 this spread became 7 cents.

The commodity rate of 27.5 cents was the result of complainant's efforts since May, 1919, to have a commodity rate established from Hailesboro to Lucaston. A rate of 19 cents was originally requested and subsequently a rate of 21 cents. The latter was 4.5 cents under the contemporaneous commodity rate of 25.5 cents from these points of origin to Philadelphia and Camden, since increased to 35.5 cents.

Commodity rates on talc were formerly in effect from Gouverneur to Lucaston and other New Jersey points. These rates were established because originally the talc mined at these points of origin was shipped to Gouverneur for grinding and there reshipped. Grinding facilities were subsequently installed at Hailesboro, and the commodity rates from Gouverneur were canceled. From June 24, 1919, to February 28, 1920, when the commodity rate was established, only eight carloads of talc moved from these points to Lucaston.

Complainant contends that reasonable rates would have been 21 cents prior to August 26, 1920, and 29.5 cents thereafter. Such rates would have been lower than the contemporaneous rates to Philadelphia and Camden. The 21-cent rate is computed on the basis of a rate of 19 cents on whiting, clay, and soda, in carloads, from Camden to Buffalo, N. Y., in effect prior to December 29, 1919, plus a differential of 2 cents for the haul beyond Camden. Complainant contends that the rate to Philadelphia and Camden is unreasonable and points out that the class rates from Gouverneur to those points upon which the class rates to Lucaston are based are the same as those to Baltimore, Md., claimed to be considerably more distant. But the distances from Hailesboro to Baltimore via Newberry Junction and Wallington, N. Y., are 527 and 498 miles, respectively, as compared with 535 and 507 miles to Philadelphia over those routes.

The rates on talc from northern New York points are blanketed over a large destination territory. The general basis of the rate to Philadelphia territory has been in effect for a long time. The rate to Philadelphia applies via Wallington or Newberry Junction, and to a number of other destinations, among which are Pittston and Easton, Pa., and Newark, N. J., 313, 419, and 570 miles, respectively, from Hailesboro. There are few inbound commodity rates to Lucaston which are less than 7 cents higher than those to Philadelphia, and on no commodity is the rate less than 2 cents higher than that to Philadelphia or Camden.

The rates on various commodities from points on the main line of the New York Central to Philadelphia and other destinations for substantially similar distances are compared with the rates here assailed. The general level of class and commodity rates from these main-line points to Philadelphia and vicinity is, and for many years has been, lower than the level of rates from Gouverneur and other points in northern New York. This is said to be due to the difference in cost of operation and traffic density in northern New York. And the rate from Camden to Buffalo hardly affords a fairly comparable basis for adjusting rates from these points of origin, as the Buffalo rate is constructed with relation to rates to and from central territory and is affected by different conditions.

In *Du Pont de Nemours & Co. v. Director General*, 64 I. C. C., 14, we found that on salt, in carloads, from points in New York to Paulsboro, N. J., 14 miles south of Camden, and other points on the West Jersey & Seashore, an arbitrary of 5 cents over the rate to Philadelphia was not unreasonable prior to August 26, 1920; and in *Belber Trunk & Bag Co. v. W. J. & S. R. R. Co.*, 66 I. C. C., 490, we found that the class rates to Woodbury, N. J., on the West Jersey & Seashore 8 miles south of Camden, 7 cents over the rates to Philadelphia, were not unreasonable.

We find that the rates assailed were not and are not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaints will be dismissed.

No. 12346.

OLD BEN COAL CORPORATION

v.

DIRECTOR GENERAL, AS AGENT, AND CHICAGO,
BURLINGTON & QUINCY RAILROAD COMPANY.

Submitted January 14, 1922. Decided May 2, 1922.

Rate on rock or shale dust, in carloads, from West Frankfort, Ill., to Christopher and Sesser, Ill., during Federal control, found unreasonable. Reparation awarded.

Ralph Merriam for complainant.

Royal T. McKenna for director general, as agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation mining and shipping coal with principal office at Chicago, Ill. By complaint filed February 23, 1921, as amended, it alleges that the rate charged on 84 carloads of ground rock or shale dust shipped between December 31, 1918, and February 29, 1920, from West Frankfort, Ill., to Christopher and Sesser, Ill., was unreasonable and unduly prejudicial. Reparation is sought. Rates will be stated in amounts per net ton.

The shale or stone is obtained in the mining of bituminous coal. After being separated from the coal it is crushed, dried, and ground to a degree of fineness substantially the same as ordinary wheat flour. It is used by complainant in choking and localizing explosions, and its extended use in the future in other coal mines is probable. It is shipped in paper-lined open-top coal cars and loads approximately 100,000 pounds to the car. Its value is stated to be from \$5 to \$7 per net ton. No loss or damage claims have been filed.

The shipments moved over the Chicago, Burlington & Quincy, hereinafter called the Burlington, 10 miles to Christopher and 18 miles to Sesser. There was no specific rate on stone dust between these points, and charges were collected at the tenth-class distance rate of \$1 applicable on crushed stone and slate dust under the governing Illinois classification.

Stone dust generally moves throughout the territory in question at the commodity rates applicable on crushed stone which are usually lower than the class basis. For example, rates ranging from 40 to 70 cents apply on crushed stone between points in Illinois on the Chicago & Eastern Illinois for distances of from 2 to 94 miles; from 50 to 70 cents on crushed stone and stone dust from Kankakee and Anna, Ill., to points in Illinois on the Illinois Central for distances of from 5.4 to 87.8 miles; 70 cents on crushed stone from points in Missouri to points in Illinois on the Burlington for distances ranging from 4.9 to 30 miles, 60 and 70 cents on crushed stone, crushed granite, and stone dust from East St. Louis, Ill., to points in Illinois on the Mobile & Ohio for distances ranging from 6.7 to 36.5 miles; 70 cents on crushed stone from points in Illinois to many points in the same State on the Burlington and to Burlington, Iowa, for hauls ranging from 2.9 to 33.7 miles; and from 40 to 60 cents from East St. Louis, Ill., to points in Illinois on the Wabash for hauls of from 8.1 to 110 miles. The Chicago & North Western maintains rates ranging from 60 to 80 cents on crushed stone between points in Illinois, from points in Wisconsin to points in Illinois, and from Winona, Minn., to Wisconsin points. Complainant also compares the rates charged with lower rates on other low-grade commodities, such as sand and gravel, ice, cinders, broken glass, coal, and gypsum rock between points in Illinois and Missouri for distances in some instances in excess of 100 miles. While all the transportation conditions under which the rates referred to apply are not shown in detail, it clearly appears that stone dust quite generally moves in Illinois and adjacent States at commodity rates substantially lower than the class basis. It is asserted that limestone dust frequently moves in the Central West at lower rates than apply on crushed stone and that the only characteristic distinguishing complainant's stone dust from limestone dust is that the latter is somewhat lighter in color. Complainant grinds limestone and shale rock indiscriminately, depending upon the character of the stone surrounding the vein of coal that is being mined, and uses both kinds for the same purpose.

The director general introduced evidence in justification of the minimum class rates established under General Order No. 28, but no evidence was introduced to show that the tenth-class rate was the usual basis on stone dust in the territory in question or that the rate assessed was reasonable *per se*.

After the shipments moved a commodity rate of \$1, which is equivalent to a rate of 70 cents prior to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220, was established. This rate is satisfactory to complainant.

We find that the rate assailed was unreasonable to the extent that it exceeded 70 cents per net ton; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with Rule V of the Rules of Practice.

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INVESTIGATION AND SUSPENSION DOCKET No. 1496.

BURLAP AND GUNNY BAGS FROM ST. LOUIS AND
OTHER POINTS TO C. F. A. DESTINATIONS.

Submitted April 3, 1922. Decided May 3, 1922.

Proposed cancellation of less-than-carload commodity rates and application of higher class rates in lieu thereof on burlap and gunny bags from St. Louis, Mo., East St. Louis, Ill., and upper Mississippi River crossings to destinations in central territory found justified. Order of suspension vacated and proceeding discontinued.

L. H. Strasser, C. N. Richards, L. W. Heinmüller, and Edward Hart, jr., for respondents.

H. R. Brashear for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND COX.

BY DIVISION 3:

By schedules filed to become effective March 1, 1922, respondents propose to cancel their less-than-carload commodity rates on burlap and gunny bags from St. Louis, Mo., East St. Louis, Ill., and upper Mississippi River crossings to destinations in central territory, thereby making applicable higher class rates. Upon protest of the St. Louis Chamber of Commerce, the operation of the schedules was suspended until June 29, 1922. Rates will be stated in amounts per 100 pounds.

When the order of suspension was entered in February, 1922, less-than-carload commodity rates were in effect on the same commodities from Memphis, Tenn., to destinations in central territory, and the disturbance of the adjustment as between St. Louis and Memphis was the sole ground of protest. On April 1, 1922, these rates from Memphis were canceled and class rates now apply, so that the cause of the protest has been removed.

The class rates which would become applicable are governed by the official classification, in which new burlap and gunny bags, not lined, are rated third class in bags, bundles, bales, boxes, or rolls, less than carloads. The southern classification governs the present class rates from Memphis, and the corresponding ratings are fourth class in bags or bundles and fifth class in bales, boxes, or rolls. Indianapolis, Ind., 241 and 491 miles from St. Louis and Memphis,

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respectively, is a typical destination point, and the rates thereto illustrate the situation. Prior to April 1, 1922, the commodity rates from St. Louis and Memphis were 42.5 and 35.5 cents, respectively. The present rate from St. Louis is 42.5 cents, the proposed rate 57.5 cents. The present fourth and fifth class rates from Memphis are \$1.025 and 83 cents, respectively.

To many points the Memphis rates apply through St. Louis. The departures from the long-and-short-haul provision of the fourth section of the interstate commerce act which existed prior to April 1, 1922, were protected by appropriate orders issued by us, but those orders do not authorize any increase in discrimination against intermediate points. Apparently no such departures exist at the present time, and it does not appear that any would result under the proposed rates.

Commodity rates were established some 15 years ago in order to assist the St. Louis manufacturers in marketing their product in central territory in competition with manufacturers at Memphis, who then had low rates. At that time a number of the lines in central territory did not agree to the proposal and instructed the publishing agent, who was also chairman of the committee which considered the matter, not to publish the rates for their account. Nevertheless, the rates were established for account of all carriers except the Cleveland, Cincinnati, Chicago & St. Louis. Nothing further was done until about two years ago, when respondents were requested to extend the commodity rates to include burlap bagging, which moves on class rates in less than carloads. Upon investigating that request the error of the publishing agent with respect to the bag rates was discovered. It also developed that there were no similar rates on bags in effect between other points in central territory, class rates uniformly applying, and that the movement under the commodity rates is comparatively small. Under the circumstances all of the interested lines decided to cancel the bag rates and the schedules here under suspension were filed. Respondents point out that carload commodity rates are provided for this traffic, and contend that the class rates are proper for application on less-than-carload shipments, especially in view of the fact that class rates now apply from Memphis.

We find that respondents have justified the schedules under suspension. An order will be entered vacating our order of suspension and discontinuing this proceeding.

No. 12693.

PORTLAND TRAFFIC & TRANSPORTATION
ASSOCIATION ET AL.

v.

SPOKANE, PORTLAND & SEATTLE RAILWAY COMPANY
ET AL.

Submitted December 29, 1921. Decided May 2, 1922.

Rates on table and shelf oilcloth, in carloads, from Peekskill, N. Y., and Rock Island, Ill., to Portland, Oreg., found unreasonable. Reparation awarded.

Wm. C. McCulloch for complainants.

R. J. Hagman and *E. C. Matthias* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are the Portland Traffic & Transportation Association, a voluntary organization, and I. N. Fleischner, Marcus Fleischner, Mark A. Mayer, Sam Simon, Josephine Hirsch, Sanford Hirsch, and Nathan Strauss, copartners engaged in the wholesale dry-goods business at Portland, Oreg., under the trade name of Fleischner, Mayer & Company. By complaint filed April 4, 1921, they allege that the fourth-class rates of \$3.755 and \$3.335 charged, respectively, on two carloads of table and shelf oilcloth, shipped September 22, 1920, and January 14, 1921, from Peekskill, N. Y., and Rock Island, Ill., to Portland, were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded commodity rates of \$1.835 and \$1.50, respectively, established March 15, 1921. Reparation only is sought. Rates are stated in amounts per 100 pounds.

The shipment from Peekskill, in Group A, in the transcontinental westbound tariffs, weighed 61,176 pounds and moved over the New York Central, Chicago, Burlington & Quincy, Great Northern, and Spokane, Portland & Seattle, 3,193 miles. Charges of \$2,297.16 were assessed thereon. The shipment from Rock Island, in Group E, weighed 83,103 pounds and moved over the Chicago, Rock Island & Pacific, Northern Pacific, and Spokane, Portland & Seattle, 2,218 miles. Charges of \$2,771.49 were assessed thereon. The applicable

fourth-class rates yielded earnings of 23.5 and 30 mills per ton-mile and 71.9 cents and \$1.25 per car-mile, respectively.

The rates to the basis of which reparation is asked were contemporaneously applicable from Peekskill and Rock Island to San Francisco, Calif.

No evidence was offered by defendants.

We find that the rates charged were unreasonable to the extent that they exceeded \$1.835 from Peekskill and \$1.50 from Rock Island. We further find that I. N. Fleischner, Marcus Fleischner, Mark A. Mayer, Sam Simon, Josephine Hirsch, Sanford Hirsch, and Nathan Strauss, copartners trading as Fleischner, Mayer & Company, made the shipments as described and paid and bore such part of the charges as exceeded those herein found reasonable; that they have been damaged in the amount of the charges paid by them; and that they are entitled to reparation in the sum of \$2,699.52, with interest. Findings in respect of the allegations of unjust discrimination and undue prejudice are unnecessary.

An appropriate order will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1427.

RECIPROCAL SWITCHING AT KANSAS CITY, MO., AND
KANSAS CITY, KANS.

Submitted March 17, 1922. Decided May 4, 1922.

Increased charges for switching at Kansas City, Mo.-Kans., proposed by the St. Louis-San Francisco Railway, Missouri Pacific Railroad, and Kansas City Southern Railway, found not justified, and suspended schedules ordered canceled without prejudice to a change proposed by the first-named carrier in its intraterminal switching charges.

F. H. Moore and *G. H. Muckley* for Kansas City Southern Railway Company; *M. G. Roberts* and *R. N. Nash* for St. Louis-San Francisco Railway Company; and *H. G. Herbel* and *C. C. P. Rausch* for Missouri Pacific Railroad Company.

J. H. Tedrow for Chamber of Commerce of Kansas City, Mo.; *E. F. Halstead* and *E. M. Harber* for Kansas City, Mo.; *H. J. Smith* for Kansas City, Kans.; and *W. R. Scott* for Board of Trade of Kansas City, Mo.

S. H. Strawn, *F. H. Towner*, *Chas. M. Miller*, and *J. A. Behrle* for Chicago & Alton Railroad Company.

Kendall Laughlin for Atlas Cereal Company; *R. Steinacker* for Tarkio Molasses Feed Company; *C. E. Warner* for Southwestern Interstate Coal Operators Association; *M. C. Lysle* for Mutual Oil Company; *C. D. Dooley* for Peet Brothers Manufacturing Company; *N. C. Campbell* and *D. B. Tilson* for Kansas City Hay Dealers Association; and *L. D. Sumerwell* for Kansas City Refining Company.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

BY DIVISION 2:

By schedules filed to become effective October 25, November 2, and December 2, 1921, the St. Louis-San Francisco Railway, hereinafter called the Frisco, the Missouri Pacific, and the Kansas City Southern, proposed to establish increased charges for switching car-load freight between industries and public team tracks on their lines and interchange points with other carriers at Kansas City, Mo.-Kans. The increases proposed by the Frisco and the Kansas City Southern range from 50 cents to \$2, and by the Missouri Pacific from 50 cents to \$3 per car. Upon protests filed by the Chamber of Commerce of Kansas City, Mo., the Atlas Cereal Company, and the Chicago &

Alton Railroad, the operation of these schedules was suspended until March 24, 1922. Their effective dates were later voluntarily extended by respondents until June 1, 1922. Except as noted, charges will be stated in amounts per car.

The three respondents own and operate extensive terminals at Kansas City, which is served by 14 trunk-line carriers. Respondents' switching district follows in a general way the course of the rivers which traverse the industrial portions of Kansas City, Mo., and Kansas City, Kans. The Blue River flows north into the Missouri River in the eastern portion of Kansas City, Mo. The Missouri River lies generally north of Kansas City, Mo., and east of Kansas City, Kans. The Kaw River flows north into the Missouri River and for nearly a mile closely follows the Missouri-Kansas State line. This boundary line, however, is straight, while the Kaw River takes a winding course, so that approximately one-half of the so-called west bottoms district, which is on the east side of the Kaw River, is in the State of Kansas. The Blue and Kaw Rivers are about 5 miles apart.

The Frisco has two lines into Kansas City, one from the south along the banks of the Blue River, and the other coming from the southwest through Rosedale, Kans., which is a separately incorporated town adjoining Kansas City, Kans., and bordering on the Kaw River. These two lines are not connected, and the interchange switching is performed over the rails of the Kansas City Terminal Railway. The great bulk of the interchange switching performed by the Frisco is between its connections in the west bottoms and industries located there and in Rosedale, and in Roanoke, a section of Kansas City, Mo., just east of Rosedale. Interchange switching is also performed between its connections with other lines located along the Blue River or in sections of Kansas City, Mo., known as Centropolis and Sheffield, and industries located in these districts.

The Missouri Pacific terminals form connecting links between its lines which enter Kansas City from the east, south, and north. Its switching districts follow in a general way the Blue, Missouri, and Kaw Rivers, and may be conveniently grouped into five divisions: (1) Sheffield and Centropolis districts; (2) east bottoms district, extending west to Lydia Avenue; (3) west of Lydia Avenue to Morris & Company packing plant; (4) west of Morris & Company to Ramapo, Kans.; and (5) north of Ramapo.

The Kansas City Southern uses the main-line tracks of the Frisco entering Kansas City from the south along the Blue River. Its terminals and switching tracks extend along the Blue, Missouri, and Kaw Rivers. The four general tariff groups are the eastern, middle, western, and Sugar Creek divisions.

There is no uniform zoning system used by the various carriers entering Kansas City as a basis for switching charges. Under General Order No. 28 of the Director General of Railroads, the local or intraterminal rates were increased 25 per cent, while the reciprocal or interchange switching charges were not increased. Under the 1920 general increase all switching charges at Kansas City were increased 35 per cent.

The switching charges of the Frisco are published between industries and team tracks on its line and interchange points with connecting lines. The interchange points are either in the west bottoms district or in the Sheffield district, and some lines have a connection with the Frisco in both districts. The team tracks are located in the west bottoms, Rosedale, Roanoke, and Sheffield districts. On January 1, 1910, the switching charge of the Frisco between team tracks and points of interchange was generally \$5. This was increased on August 26, 1920, to \$7, and the proposed charge is \$9. Between team tracks in Sheffield and interchange points in the west bottoms, and between team tracks in the west bottoms, Rosedale, and Roanoke and interchange points in Sheffield the present charge is \$8 and the proposed charge \$10. Between industries and interchange points the charge on January 1, 1910, was generally \$3. The present charges for this service range from \$4 to \$7 and those proposed from \$6 to \$8.

On certain local or intraterminal traffic, for blocks of 5 and 10 miles, switching charges of the Frisco are published in cents per 100 pounds. The minimum charge is \$10 per car, and on some commodities the charge exceeds \$20. No change is proposed in these rates. However, on other traffic the application of charges in amounts per car has been changed. Effective February 29, 1920, the Frisco switching tariff was corrected, so that charges in amounts per car were made inapplicable on shipments originating at points on its line within the Kansas City switching limits and destined to points on connecting lines within such limits. In the current tariff, which became effective January 5, 1921, the correction made on February 29, 1920, was inadvertently omitted, with the result that charges in amounts per car now apply between points on the Frisco and points on connecting lines within the switching limits, while between points on the Frisco rates in cents per 100 pounds apply. Under the proposed tariff charges in amounts per car are limited to shipments originating at or destined to points outside the switching limits, or from points on connecting lines within the switching limits to points on the Frisco within such limits. For example, under the present tariff the charge on a car weighing 60,000 pounds between two points on the Frisco within the switching limits at the fifth-class rate of 4 cents per 100 pounds is \$24, while if the same car were

destined to a point within the switching limits of Kansas City on the Rock Island, a connecting line, a charge of \$5.50 on the Frisco and a similar charge of \$5.50 on the Rock Island would apply, making the through charge \$11. Therefore the charge for a two-line movement is less than for a one-line switching movement. Under the proposed tariffs rates in cents per 100 pounds would apply in both instances.

The switching charges of the Missouri Pacific are also published between groups of interchange points and team tracks and industries on its line. There are two groups of interchange points—one at the west bottoms and the other at the east bottoms and Sheffield districts. There is a third group, but rates from this group apply on switching within the State of Kansas. The only public team tracks of this carrier appear to be on Minnesota Avenue in Kansas City, Kans., and no increase is proposed in the charges from and to these tracks. It is proposed to establish a charge of 2.5 cents per 100 pounds, minimum \$12 per car, between public team tracks of the Kansas City Northwestern in Kansas City, Kans., and all interchange points. The Kansas City Northwestern has suspended operation, but its terminals at Kansas City are being operated by other lines. On January 1, 1910, the charges between industries and interchange points ranged from \$3 to \$5. The present charges differ according to whether the switching movement is in connection with a line haul. Under the proposed schedules no such distinction is made. This results in some reductions in charges for switching which is not in connection with a line haul. The present charges in connection with a line haul range from \$4 to \$7, and those not in connection with a line haul from \$5.50 to \$9. The proposed charges range from \$6 to \$9. It appears that the present charges of this respondent are on a somewhat higher level than those of the other two respondents.

The switching charges of the Kansas City Southern are published in the alternative and the tariff appears to be unnecessarily complex. Sections 1 and 2 are alternative in their application with section 3. Section 1 contains the charges when the shipment is switched incident to a line haul, and distinguishes between a movement between one industry and another industry or track on the Kansas City Southern, and a movement between an industry on its line and a connection with some other line, the charges for the latter service being from \$1.50 to \$2 higher. Section 2 contains the charges when the shipment is handled in intraterminal switching movement, but here also the same distinction is made between switching to and from one industry and another industry or track, and between an industry and an interchange point. The charges in section 2 are generally from

\$1.50 to \$2 higher than those in section 1. Section 3 contains certain exceptions. The arrangement of the proposed tariff is somewhat different from the one in force, and no charges are published for switching incident to a line haul between an industry and another industry or track on the Kansas City Southern. No increase is proposed in the charges for switching which is not incident to a line haul. The industries and tracks are divided into four groups known as the eastern, middle, western, and Sugar Creek divisions. Only the middle and western divisions contain team tracks. On January 1, 1910, the charges for switching between team tracks and interchange points ranged from \$3.25 to \$5.25. The present charges incident to a line haul range from \$7 to \$9.50, and those proposed from \$8 to \$10.50. On January 1, 1910, the charges for interchange switching between industries and interchange points, not including the Sugar Creek division, ranged from \$3 to \$5. The present charges for this service incident to a line haul range from \$5.50 to \$7; and those proposed, from \$7 to \$10.50. The Sugar Creek division has no connections with other lines. The present charge for switching between industries at Sugar Creek and industries on the Kansas City Southern, or connections with other lines, incident to a line haul, is \$9 per car of 60,000 pounds or less, excess 5 cents per 100 pounds additional, and the proposed rate is \$10, with the same additional charge.

The approximate level of the reciprocal switching charges of other carriers entering Kansas City is as follows:

Atchison, Topeka & Santa Fe-----	\$4 to \$8
Union Pacific-----	\$4 to \$9
Wabash-----	\$4 to \$7
Chicago & Alton-----	\$4 to \$7
Chicago, Burlington & Quincy-----	\$4 to \$7
Chicago, Milwaukee & St. Paul-----	\$4 to \$7
Chicago Great Western-----	\$2.50 to \$7
Missouri, Kansas & Texas-----	\$4
Chicago, Rock Island & Pacific-----	\$4 to \$7

Respondents contend that the switching charges under suspension are not in fact reciprocal. Out of 739 industries which have private sidings at Kansas City, 356, or 48.17 per cent, are located on the rails of respondents, while 160, or 21.65 per cent, are located on the rails of the Kansas City Terminal. Respondents own 58 team tracks having a total capacity of 603 cars, as compared with 53 team tracks having a total capacity of 907 cars owned by all other lines entering Kansas City, except the Kansas City Terminal. For the 12-month period ended September 30, 1921, the Frisco switched 25,240 cars for other lines, not including the Missouri Pacific, Kansas City Southern, and Kansas City Terminal, while the same lines switched for the

Frisco only 6,010 cars; the Missouri Pacific switched 41,774 cars for other lines, excluding the Frisco, Kansas City Southern, and Kansas City Terminal, while the same line switched 25,471 cars for the Missouri Pacific; and the Kansas City Southern switched 81,112 cars for other lines, not including the Missouri Pacific, Frisco, and Kansas City Terminal, while the same lines switched 5,704 cars for the Kansas City Southern. On the other hand respondents switched a large number of cars for each other. For the year ended September 30, 1921, the number of cars switched for other lines and the number switched by foreign lines for each of respondents is shown below:

	For foreign lines.	By foreign lines.
Frisco-----	34, 059	30, 982
Missouri Pacific-----	49, 831	62, 153
Kansas City Southern-----	101, 336	16, 299

From the above it will be seen that, with the exception of the Kansas City Southern, the amount of interchange switching performed is fairly reciprocal. The fact, however, that interchange switching rates are or are not reciprocal, is unimportant, as the so-called reciprocity theory of establishing switching charges has been condemned by us in several cases. *Switching at Galesburg, Ill.*, 31 I. C. C., 294; *Switching and Absorption at Minneapolis*, 61 I. C. C., 646; *Interchange Switching at Atlanta*, 63 I. C. C., 258.

The tariffs of the various lines entering Kansas City, generally speaking, provide for the absorption of switching charges of other lines on all competitive traffic, that is, traffic that could be brought in over other lines. In addition to this, there is a list of commodities which are mostly competitive, such as brick, coal, cement, and grain, the switching charges on which are absorbed to a limited extent. Respondents submit exhibits which tend to show that, excluding grain, approximately 90 per cent of the reciprocal switching charges at Kansas City are absorbed. In *Interchange Switching at Wichita*, 61 I. C. C., 205, 206, we said:

In a proceeding to determine the propriety of switching charges absorbed by carriers, we must consider them as though they were charged for by the railroad rendering the service and paid for by the shippers. *Switching Absorption*, 47 I. C. C., 583; *Detroit Switching Charges*, 28 I. C. C., 494.

The Chicago & Alton, hereinafter called the Alton, is a protestant in this case. In general, the reciprocal switching charges of connecting lines are absorbed by the Alton, and the operation of the proposed schedules would result in the transfer of additional revenue from this carrier to the respondents, which is equivalent to a change in the present divisional arrangements. In this connection, the Alton contends that the proposed increases are in contravention of section 208(b) of the transportation act, which reads as follows:

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All divisions of joint rates, fares, or charges, which on February 29, 1920, are in effect between the lines of carriers subject to the interstate commerce act, shall continue in force and effect until thereafter changed by mutual agreement between the interested carriers or by state or federal authorities, respectively.

The only increases in these switching charges since the transportation act became effective were the general increases of 1920. There were no negotiations between respondents and the Alton in reference to these proposed increases. Since approximately 90 per cent of these switching charges are absorbed, we are of the opinion that the connecting lines should have been consulted.

Respondents show by graphic chart, based upon statistics compiled by the Bureau of Railway Economics, that the percentage increase over 1913 of the cost of labor, materials, and supplies is considerably in excess of the percentage increase of the proposed switching charges over those in effect in 1913. They also introduced exhibits showing that the present charges of the Kansas City Terminal for interchange switching are considerably higher for like distances than the proposed charges. The Kansas City Terminal performs only switching service and is owned jointly by 12 of the trunk lines entering Kansas City. It also owns and operates the Union Passenger Station. On January 1, 1921, it increased its interchange switching charges, ranging from \$7 to \$10, to from \$9 to \$11. Protests against these increases were received by the commission too late for the schedules to be suspended. It is not shown that transportation conditions on the Kansas City Terminal, which operates through an entirely different portion of the city, are the same as on respondents' terminals. There is no evidence with respect to the grades and curves on that line, but the maps submitted show that it intersects a relatively larger number of streets than do the lines of respondents. Respondents do not claim that their switching charges should be on the same basis as those of the Kansas City Terminal.

Each of respondents conducted an independent test during the period of 14 days from November 17 to 30, 1921, inclusive, to determine the cost per car of interchange switching service. The formula was agreed upon in advance and was followed by each of respondents except in so far as different methods of separating accounts warranted a different method of allocation. The terminals of each respondent were divided into running zones and switching zones, according to the character of the service performed. Where through movements were made from one part of the terminal to another by yard engines, over the same tracks used for switching, a running zone was made and also a switching zone, in order that the two classes of work might be kept separate. A record was kept of all cars, both loaded and empty, going into a particular zone which were handled

by a switch engine and of those delivered by a road or foreign-line engine. By consolidating the time consumed and the number of cars handled in each zone in each of the classes of service referred to, the average switch-engine time per car was secured for each zone. After having obtained this average time, the movement of each car in interchange switching service was traced through the different zones, from the time it left the interchange point to go to the team track or industry until returned to the interchange point, to the storage yard, or placed in other service. The average time consumed per car for each zone through which the car moved was charged to that car. If a car was unloaded and reloaded in the same zone, the average time in that zone was divided equally between the two movements. The switch-engine time per car thus arrived at was not actual time consumed, but represented the sum of the averages for each zone through which the car passed. For purposes of these cost studies, the actual movements were classified as between certain groups corresponding to groups in the tariffs. For example, the average time consumed in moving a car from the Frisco's Roanoke group to interchange points in the west bottoms was 36.54 minutes. The average time between all groups for the Frisco was 29.12 minutes, for the Missouri Pacific, 32.65 minutes, and for the Kansas City Southern, 32.15 minutes per car.

The principal factors of cost were apportioned on basis of the switch-engine hour. Operating expenses, except clerical expenses and maintenance of freight-car equipment, were reduced to a unit cost per switch-engine hour. These expenses were first allocated to the Kansas City switching district as between switching and road service. For example, track-laying and surfacing expenses were allocated directly to the miles of switch track, and were apportioned to main tracks on basis of the use of main tracks by switch and road engines. No direct allocation of this item was made by the Missouri Pacific. This amount was then reduced to a unit cost per switch-engine hour by dividing it by the total number of switch-engine hours in the terminals during the test period. Most of the operating expenses were not the actual expenses for the test period of 14 days, but were computed on the basis of the expenses for a period of three months, namely, July, August, and September, 1921, equated to the period of 14 days. The total amount of operating expenses, except clerical expense and maintenance of freight-car equipment, allocated to the Kansas City switching district for the test period by the Frisco was \$30,121.26, and the total switch-engine hours was 2,391, representing an average switch-engine hour cost of \$12.60. For the Missouri Pacific the average switch-engine hour cost was found to be \$16.99, and for the Kansas City Southern, \$16.24.

The clerical cost chargeable to a car in switch movement was computed on a consignment unit basis, viz, a single shipment by one consignor to one consignee, whether carload or less. This was upon the theory that as much clerical work was required in connection with a less-than-carload as in connection with a carload shipment. Certain primary accounts under the general head of maintenance of way and structures were apportioned to clerical expense; for example, I. C. C. account No. 227, station and office buildings. An expense of repairing the roof of a building housing a freight agent and clerks was divided in proportion to the total number of square feet occupied by such freight agent and clerks. Other expenses under this head were apportioned upon basis of the ratio that account No. 227, apportioned to clerical expense, bore to the total of all maintenance of way and structures expenses apportioned to the Kansas City switching district. Certain primary accounts under the general account transportation were allocated to clerical expense. The expense of station employees, for example, was allocated directly to those handling switch movements. Other accounts, such as the dispatching of trains, were apportioned on basis of the proportion, to the total messages handled, of those sent for the agent in charge of switch movements. The average cost per consignment or per car was found to be for the Frisco 15.2 cents, for the Missouri Pacific, 19.9 cents, and for the Kansas City Southern, 28.9 cents.

The freight-car maintenance cost, including depreciation and retirements, was computed upon the basis of car-detention days. The number of days was found by tracing the actual number of days each car switched during the test period was in switching service, observing as a maximum seven days on any one car. The average car-detention days for the cars moved in interchange switching on the Frisco was 3.8 days, on the Missouri Pacific 3.8 days, and on the Kansas City Southern 3.4 days. The cost of freight-car repairs, depreciation, and retirements for the entire line was ascertained per car-day. The unit cost per car-day was multiplied by the car-detention days of the cars switched during the test period. All other expenses under this general heading were apportioned on basis of the ratio that the freight-car repairs apportioned to the cars switched in the test bore to the total of the entire-line equipment-repair accounts. The average cost of freight-car maintenance per car-day of the cars in the test was found to be, for the Frisco, 38.1 cents, for the Missouri Pacific, 60 cents, and for the Kansas City Southern, 84.5 cents. The average car-maintenance cost for the average period of car detention of the cars in the test on the Frisco was \$1.45, on the Missouri Pacific, \$2.29, and on the Kansas City Southern, \$2.88.

The novel feature of these cost studies is the division of the terminals into different zones and the method of obtaining the average switch-engine time per car handled in each zone. Protestants contend that the work of making and breaking up trains, which is treated as switching service, is properly a road service and that the switch-engine hours consumed in the performance of this service should be excluded from the computation. There is much force to this argument, as this service is not performed in reciprocal switching. The arrangement of cars in a train in station order is clearly a road service. Another pertinent criticism is that the time consumed in intraplant switching entirely within a particular zone should not be charged to the average time for switching a car in that zone, since cars are only counted when they enter a zone, and there is a separate charge for intraplant switching. To make this time study complete, each car handled in switching service in addition to those moved in reciprocal switching should be traced through the different zones through which it passed irrespective of whether it was switched from or to a train on the owning line or for some other line, or whether moving from one point to another within the switching limits. We are of the opinion also that the switch-engine time consumed in making and breaking up trains and in performing intraplant switching entirely within a zone, should be eliminated. The total number of switch-engine hours could then be used as a check to prove the results. It is fair to assume that the average time consumed in switching a car between one of respondents' road trains and an industry or team track is the same as that consumed in switching a car for some other line. The present charges for intraterminal switching are, generally speaking, on a considerably higher basis than the charges for reciprocal switching. From this we may assume that the time consumed in this service is at least equal to that in reciprocal switching.

Respondents were required at the hearing to furnish a statement of all cars handled in switching movement during the test period. The Frisco and Missouri Pacific furnished a statement of all loaded and empty cars received from their own trains or connecting lines. A similar statement furnished by the Kansas City Southern included only loaded cars. It is apparent that this would not include a large number of cars in the test, for the reason that they were received empty from connections. Although these statements take no account of outbound movements, it is pointed out that in most instances there is an inbound and an outbound movement and that the number of cars received would therefore approximate the number of cars handled. The following table shows the percentage of cars switched for other

lines as compared with the percentage of the total switch-engine hours consumed:

Carrier.	Cars received.	Cars switched for other lines.	Per cent of cars.	Total switch-engine hours.	Switch-engine hours apportioned to switching for other lines.	Per cent of hours.
Frisco.....	9,304	1,240	13	2,391	602	25
Missouri Pacific.....	16,410	1,648	10	5,306	892	17
Kansas City Southern.....	¹ 6,860	3,008	¹ 43	2,806	1,611.5	56

¹ Does not include empties.

It will be observed that on the Frisco 25 per cent of the total switch-engine hours were consumed in switching 13 per cent of the cars. Respondents contend that there were a number of so-called transfer-switching movements of cars passing through the terminal, where long strings of cars are not broken up but simply shifted from one road train to another. On the other hand, the Kansas City Southern delivers live stock to the Alton in solid trains of from 35 to 50 cars. The maximum time consumed between the receipt of empties for the stockyards by the Kansas City Southern and the delivery of loads to the Alton is three hours, and the work is performed by one switching crew. The average time per car for a movement from the stockyards district to the connection of the Kansas City Southern with the Alton was found to be 37 minutes per car. For 50 cars the time charged in the cost study would be 31 switch-engine hours for a movement which actually consumed only 8 hours, or 8.6 minutes per car. The Kansas City Southern has an agreement with the Alton to handle this business within a time limit of 3 hours, and the former carrier contends that this expedited service tends to increase the cost. However, it appears that the tracks over which this movement occurs are used only for switching purposes, and the cost of this service during the test period, computed under respondents' formula, was much lower than the average.

In our order of May 19, 1914, prescribing a uniform system of accounts to be kept by carriers, we provided that yard switching locomotive-miles should be computed at the rate of 6 miles per hour for the time actually engaged in such service. This basis has been used by the Frisco as the basis of computing its switch-engine repairs and depreciation. The average movement in reciprocal switching from point of interchange to industry or team track and return within the Kansas City switching limits would not exceed 6 miles. Assuming that a switch engine hauled an average of only five cars in

any one movement, the average switch-engine time would be 12 minutes per car.

The following figures show that the number of cars switched for other lines during the test period was subnormal:

	Year ended Sept. 30, 1921.	One month.	Fourteen- thirtieths of month.	Test period.
Frisco.....	34,059	2,838	1,324	1,240
Missouri Pacific.....	49,831	4,152	1,937	1,648
Kansas City Southern.....	101,336	8,445	3,941	3,008

The average for 14 days based on a year's business can not be applied to respondents' cost formula. An increase in the volume of switching would ordinarily reduce the unit of time per car handled in each zone, but to what extent such average time would be reduced could only be determined by actual test. No doubt the volume of business for the year ended September 30, 1921, was subnormal as compared with other years. Respondents admit that unit costs decrease with an increase in the volume of business up to a certain point, but contend that beyond that point there is congestion and interference which tends to increase costs. This condition, however, should rarely occur under efficient management.

A comparative statement of the final results of these cost studies is shown below:

	Frisco.	Missouri Pacific.	Kansas City Southern
<i>Engine-hour costs.</i>			
Maintenance of way and structures.....	\$1.59	\$3.12	\$2.63
Maintenance of equipment (excluding freight cars).....	1.70	2.26	2.34
Transportation expenses.....	8.45	10.17	9.73
Traffic expenses.....	.24	.57	.54
General expenses.....	.64	.87	1.01
Transportation for investment—Credit.....	.018	.....	.003
Cost per switch-engine hour.....	\$12.60	\$16.99	\$16.25
Average switch-engine time of cars in test..... Minutes..	29.12	32.65	32.15
Average switch-engine-hour cost of cars in test.....	\$6.11	\$9.24	\$8.70
<i>Clerical costs.</i>			
Maintenance of way and structures.....	\$0.003	\$0.005	\$0.000
Transportation.....	.148	.196	.289
Cost per consignment, or car.....	.15	.20	.29
<i>Freight-car maintenance costs.</i>			
Average maintenance cost per car-day.....	\$0.281	\$0.60	\$0.845
Average car detention..... Days..	3.8	3.8	3.4
Freight-car-maintenance cost of cars in test.....	\$1.45	\$2.29	\$2.83
Total average cost of switching cars in test.....	\$7.71	\$11.69	\$11.87

The above costs do not include taxes. Nor was any attempt made to compute a fair return upon investment.

The most striking difference which is observed in the comparison of these unit costs is in the item of maintenance of way and structures. The unit cost of this item on the Missouri Pacific is approximately 100 per cent, and on the Kansas City Southern 65 per cent, greater than that of the Frisco. The total maintenance of way-and-structure expense allocated to the switching service at Kansas City shows an even greater disparity:

Frisco	\$3, 800. 05
Missouri Pacific	16, 583. 08
Kansas City Southern	7, 382. 90

As shown by the map submitted by respondents, the miles of track within the Kansas City switching district are as follows: Frisco, 80; Missouri Pacific, 146; and Kansas City Southern, 103. The Kansas City Southern and Missouri Pacific both have tracks leading to Independence, Mo., which point is shown on respondents' map as being included in the Kansas City switching district. However, these tracks are outside the switching limits of Kansas City. Another part of the record shows the total mileage of the Missouri Pacific within the Kansas City switching limits as 157 miles. However, the above figures show the approximate relationship of the miles of track. The above costs are not in proportion to respondents' track mileage within the switching district, nor in proportion to the volume of switching service performed. It appears that the Missouri Pacific apportioned to switching service 94.58 per cent of all way and structures maintenance expenses in connection with its terminals at Kansas City. It did not take the roadway expenses direct from the section foreman's time and material books showing the particular tracks or roadway on which the work was performed, as did the other respondents, but apportioned these expenses on the theory that it required as much maintenance on 1 mile of main-line track as on 2.5 miles of yard track. The maintenance expenses pertaining to main-line tracks were apportioned on the basis of the number of road and switch engines passing the different towers and crossings at which a flagman was stationed. All way and structures maintenance expenses were taken for the period of July, August, and September, 1921, and equated to the test period. Protestants point out that the months of July, August, and September are months in which the traffic was considerably heavier, and in which a great deal of roadway maintenance work is ordinarily performed. Respondents state that figures were only available for as late as September, when these cost figures were prepared, and that July 1 was taken because a general reduction in wages went into effect at that

time. From the wide disparity in these costs for the several respondents—which is not explained—it appears that a longer period than three months would be required to strike a fair average.

The unit cost per switch-engine hour of maintenance of equipment, exclusive of freight cars, is not as uniform as would be expected. The principal expenses under this head are for locomotive repairs and depreciation. The Frisco has apportioned these expenses on the basis of the number of switch-engine miles, while the Missouri Pacific and the Kansas City Southern have allocated these expenses directly to the switch engines used during the test period.

Transportation expenses constitute the largest item in the computation, and the unit cost per switch-engine hour shows a fair degree of uniformity. The majority of items included under this head, such as wages of crew, fuel, water, and lubricants, properly relate to switching service to which they are allocated, but there are some items, such as stationery and printing, and loss and damage, which are apportioned to switching on an arbitrary basis.

We agree with protestants' contention that traffic expenses should be eliminated. The accounts under this general heading include expenses incurred for advertising, soliciting, and securing traffic for respondents' lines and the preparation and distribution of tariffs covering such traffic. The cost of preparing and distributing the switching tariff is not shown separately, but when reduced to a per car unit, the cost would probably be negligible.

There is no uniformity in the unit cost per switch-engine hour of general expenses. The Frisco, following the formula, apportioned general expenses on basis of the percentage that the maintenance of way and structures, maintenance of equipment, and transportation expenses, allocated and apportioned to the Kansas City switching district, bore to the total of such expenses for the entire line, which gave a ratio of 1.64 per cent. The switching district is a separate accounting division for the Missouri Pacific and the Kansas City Southern. Apparently the Missouri Pacific apportioned 100 per cent of its general expenses charged to the Kansas City accounting district to switching service. The record does not show what method of apportionment of general expenses was used by the Kansas City Southern.

With reference to clerical costs, it does not appear that 15 cents per car would be excessive. However, if the clerical cost of the Kansas City Southern is 29 cents per car, or nearly 100 per cent greater than the Frisco when the Kansas City Southern switched more than twice as many cars as the Frisco, there is apparently some discrepancy requiring correction.

The method of apportioning freight-car maintenance costs is erroneous. The great majority of cars used in reciprocal switching are

foreign-line cars. If a foreign-line car is damaged while in switching service and the switching carrier is clearly at fault, the car is repaired at the expense of the switching line, under the Master Car Builders Association rules. Respondents, however, have treated the cars on the same basis as all serviceable revenue cars on their lines. There is no justification for charging depreciation and retirements on foreign-line cars. In determining the car-detention days, there was apparently no allowance made for cars on which demurrage charges accrued. Respondents state that it would be impracticable to obtain the actual amount of repairs made on the particular cars moving in reciprocal switching during the test period. But we fail to see why this information could not be obtained from inspectors' records, since each car was traced during its entire movement in the terminal. In view of the above, we find that this item should be eliminated from consideration.

Assuming, for the purpose of comparison, that the time study is correct and that the average switch-engine time consumed per car is as found by respondents, by eliminating traffic expenses, adding 15 cents per car for clerical costs, and disregarding freight-car maintenance, we have the following costs per car :

Carrier.	Engine-hour costs.	Clerical cost.	Total cost.
Frisco.....	\$5.99	\$0.15	\$6.14
Missouri Pacific.....	8.89	.15	9.04
Kansas City Southern.....	8.41	.15	8.56

And if we assume for the same purpose that all expenses in respondents' cost studies are correctly allocated or apportioned to switching service at Kansas City, except clerical and freight-car maintenance costs, we have the following average cost per car of all cars switched at that point during the test period, except in intra-plant movement :

Carrier.	Switching costs. ¹	Cars received. ²	Average cost per car.	Clerical expense.	Total.
Frisco.....	\$30,121.26	9,304	\$3.24	\$0.15	\$3.39
Missouri Pacific.....	90,156.55	16,410	5.49	.15	5.64
Kansas City Southern.....	45,584.77	8,860	5.64	.15	5.79

¹ Total switching costs of Kansas City terminal, except clerical expense and freight-car maintenance.
² Total loaded and empty cars received in Kansas City terminal during test period.
³ Does not include empties.

The Frisco study shows the cost separately for five different classes of movements, the most costly being the movement between connections in the west bottoms and industries and tracks in the Roanoke
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district. The present charge for the service is \$7 for reciprocal switching in connection with a line haul, and \$9 when not in connection with a line haul. The proposed charge is \$7 for both services, which is a reduction in the charge when the switching is not in connection with a line haul. However, if the movement is out-bound, and not in connection with the line haul, the rates in cents per 100 pounds would apply, which will result in charges generally higher than the charges per car. The heaviest movement on the Frisco occurs between the Rosedale and west bottoms districts and connections in the west bottoms. The costs are shown as \$7.77 and \$8.59 per car, respectively. The present charges are \$5.50 and \$4, respectively, and the proposed charges \$7 and \$6, respectively. It is observed that these charges are inversely in proportion to the cost as found in the cost study. There was no movement during the test period between connections in the west bottoms and industries and tracks in Sheffield or between connections in Sheffield and industries and tracks in the west bottoms district.

The Missouri Pacific study shows the costs separately on only two classes of movements and the costs shown differ only slightly, being \$11.63 between the west bottoms connections and all industries and tracks, and \$12.10 between the Sheffield connections and all industries and tracks. The present and proposed charges for these services vary considerably and have been heretofore stated.

The Kansas City Southern study shows the costs separately for 20 different classes of movements. Generally speaking, the most costly movements shown are to and from Sugar Creek, Mo., ranging from \$12.40 to \$15.22, and to and from the May Street switch, ranging from \$11.82 to \$16.01. The present charge to and from Sugar Creek, in connection with a line haul, is \$9 per car of 60,000 pounds or less, excess 5 cents per 100 pounds additional, and the proposed charge is \$10, with the same additional charge. The only charges referred to in this paragraph are those in connection with a line haul. Although Sugar Creek is within the Kansas City switching limits, it is about 3 miles east of the city limits of Kansas City, Mo., and about 9 miles east of the Missouri-Kansas State line. The May Street switch has a ruling grade of 7 per cent, which necessitates the use of two special types of Shay locomotives. These engines have a vertical drive, unlike the ordinary engine, and are seldom used except on the May Street switch. The present charges range from \$5.50 to \$7, and those proposed from \$6.50 to \$8. There is an additional charge on the May Street switch of 2 cents per 100 pounds, maximum \$6 per car, and no change in this is proposed. The heaviest movement occurs to and from the middle division, being 1,714 cars during the test period, and the costs shown by the

study range from \$10.94 to \$13.91 per car. The present charges range from \$5.50 to \$7, and those proposed from \$6.50 to \$8.

Protestants contend with much force that reciprocal switching is an incidental service, and that respondents' terminals were not built primarily to handle the switching for other lines, but for the purpose of handling business on their own lines.

The Atlas Cereal Company protests against the car-service rule which requires the return of a car to the home road or loaded for a destination in the direction of the home road upon the ground that it increases the cost of switching. This company states and shows by exhibits that it seldom receives a loaded car which it can load outbound. This causes delay in its operations and a considerable amount of extra switching. The purposes of the rule referred to are well founded in principle, and the issues of this case are not sufficiently broad to cover a change so sweeping in its effect.

The Atlas Cereal Company is located in the west bottoms district on the Frisco, within 500 feet of the interchange points between the Frisco, the Missouri Pacific, Kansas City Southern, Chicago Great Western, and Wabash. The present charge for reciprocal switching is \$4 and the proposed charge \$6. Cars moving between this plant and the Missouri Pacific are not handled direct, but are usually hauled to the Frisco's Nineteenth Street classification yard and then hauled back to the interchange point, a distance of about 2 miles. Shipments via the Kansas City Southern are delivered directly to that carrier at the interchange point. Cars for the Chicago Great Western are sometimes delivered direct and sometimes handled through the Nineteenth Street yard.

The cereal company, which has a considerable number of cars switched to points within the Kansas City switching limits, does not object to the proposed change in the outbound intraterminal switching charges of the Frisco, canceling the application of charges in amounts per car on cars originating at points on its line within the Kansas City switching limits and destined to points on connecting lines within the Kansas City switching limits, and leaving applicable rates in cents per 100 pounds. It points out, however, that on 67 cars, consisting mostly of oats, switched for it in intraterminal service by the Frisco since January 5, 1921, charges of \$5.50 per car were collected, and that the average charge under the proposed rates would be \$15.59 per car, which is 202 per cent of \$7.71, the average cost of reciprocal switching as shown by the Frisco's cost study. The charge for inbound intraterminal switching is the same as for reciprocal switching, namely, \$5.50 per car, and it is proposed to increase this to \$6, to which the protestant objects.

The principal kinds of traffic moved in reciprocal switching for the Alton by respondents are live stock, meat, and coal. The inbound movement of live stock is light and averages 6 to 7 cars a day. It is delivered to the Kansas City Southern at the Gillis Street interchange point, about 1.5 miles from the stockyards. Empty cars are also delivered to the Kansas City Southern at this point for the outbound movements of live stock, which average 30.3 cars per day for the entire year, and usually move in solid trains of 35 to 50 cars. There is an agreement between the Alton and the Kansas City Southern, hereinbefore mentioned, for the switching of outbound live stock within three hours. The present charge for this service is \$5.50, and that proposed \$7. The live stock received from the Kansas City Southern during the month of November, 1921, was less than usual, being only 651 cars, as compared with 1,526 cars in September, 1,261 cars in October, and 953 cars in December.

Since January 1, 1922, the Frisco has delivered meat from the Armour packing plant to the Alton connection in the west bottoms. The record does not show any charge by the Frisco for this service, nor does the tariff of this carrier list Armour & Company as an industry on its line. Prior to the date named, its business was handled for the Alton by the Kansas City Southern in solid trains of from 25 to 50 cars. The present charge of the Kansas City Southern for this service to its connection with the Alton is \$5.50, and that proposed \$6. The Missouri Pacific handles meat from Morris & Company to its connection with the Alton in the west bottoms in two deliveries, averaging 15 to 25 cars per day. The present charge for this service is \$4, and that proposed \$7.

Coal is delivered by the Alton and the Kansas City Southern in quantities to supply the power plants of the Kansas City Railway Company at Second Street and Grand Avenue, the Kansas City Light & Power Company in the east bottoms, and the Standard Oil Company refinery at Sugar Creek. At the power plant of the Kansas City Railway there is a considerable grade, so that the average number of cars handled by one engine is only 6 or 8. The switch leading to the Kansas City Light & Power Company is practically level and coal is handled in solid trains of 18 or 20 cars. There is also a considerable grade on the tracks leading to Sugar Creek, and the average number of cars handled by an engine to that point is not shown. The present charge of the Kansas City Southern from the Alton connection to the Kansas City Railway plant is \$5.50, and that proposed \$6.50. The present and proposed charges from the Alton connection to the Kansas City Light & Power Company's plant are \$5.50 and \$6.50, respectively. The present charge to the Standard Oil Company refinery at Sugar Creek is \$9 per car of 60,000 pounds, excess 5 cents

per 100 pounds additional, and proposed charge \$10, with the same additional charge.

By way of rebuttal, the Kansas City Southern traced some movements of live stock, meat, and coal handled for the Alton between Alton and industries and team tracks on the Kansas City Southern through the different zones during the test period and computed the cost per car on basis of the formula used in the cost study. These costs are shown below :

	Cars handled.	Cost per car.
Native Stock Yards.....	310	\$5.93
Fowler Stock Yards.....	9	6.49
Fowler Packing Company.....	8	17.35
Armour & Company.....	199	17.31
Standard Oil Company, Sugar Creek.....	82	12.59
Kansas City Light & Power Company.....	78	8.10
Quality Coal Company.....	11	18.67
Team tracks.....	16	12.94
Total and average.....	713	10.60

Switching charges at various points in this general territory are shown by exhibits to be generally less than the present switching charges at Kansas City. It is possible that the character of switching service performed at these points is substantially dissimilar to that performed at Kansas City. The following table shows the approximate level of these rates in connection with the line haul :

Memphis.....	\$2 50	Minnesota Transfer...	\$4. 00
Council Bluffs.....	2. 50	St. Paul.....	2. 00 to \$4. 00
Omaha.....	2. 50 to \$5. 50	Duluth.....	2. 00 to 4. 00
Sioux City.....	2. 00	Superior.....	2. 00 to 4. 00
Minneapolis.....	2. 00 to 4. 00		

There are a number of charges which are higher than those shown in the above table.

The burden is upon respondents to justify the proposed increases, and we are of the opinion that they have not sustained that burden. The cost studies submitted, based upon the formula agreed upon after several conferences, were prepared at considerable expense. We have given them careful consideration. The switch-engine time consumed probably affords a better measure of switching charges than the distance between the point of origin and destination, although cars often are carried for considerable distances out of the way and a substantial amount of engine time consumed for the carrier's own convenience in the dispatch of other business. The volume of business during the test period was subnormal, while a considerable portion of the costs included in the studies is more or less constant and varies but little with the volume of business. Further increases

proposed during the present period of readjustment must be examined with the greatest of care. Operating costs should be coming down, and certain road-haul rates have been reduced. We find that the proposed switching charges have not been justified. An order will be entered requiring cancellation of the suspended schedules and discontinuing this proceeding. The order herein will be without prejudice to making the change proposed by the Frisco in its switching charges applicable to cars originating at points on its line within the Kansas City switching limits and destined to points on connecting lines within such switching limits.

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No. 11817.¹
ARMAND L. DEJEAN
v.
DIRECTOR GENERAL, AS AGENT.

Submitted June 13, 1921. Decided May 8, 1922.

Charges collected on cotton shipped from various Louisiana points to Opelousas, La., for concentration and compression, thence reshipped to various Pacific and Gulf coast points, and defendants' failure to establish transit arrangements at Opelousas on all interstate traffic, found not unreasonable. Complaints dismissed.

W. M. Barrow for complainants.

John F. Finerty and *Alex M. Bull* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

The cases were consolidated for hearing and will be disposed of in one report.

Complainants are individuals dealing in cotton at Opelousas, La. By complaints filed September 11, 1920, they allege that the rates charged by defendant on 4,809 bales of cotton shipped between August 21, 1918, and February-18, 1919, inclusive, from various points in Louisiana to Opelousas for concentration and compression, and reshipped to various interstate destinations on the Pacific and Gulf coasts, were unjust and unreasonable in that the inbound and outbound rates in effect June 24, 1918, were each increased 15 cents per 100 pounds resulting in a double increase not contemplated by General Order No. 28 of the Director General of Railroads. At the hearing, without objection by defendant, the complaints were amended so as to assail as unreasonable defendant's failure, prior to April 1, 1919, to provide transit arrangements at Opelousas, except as hereinafter indicated. Reparation is sought to the basis of the rates applicable under the tariff provisions establishing transit arrangements on interstate traffic, effective April 1, 1919.

¹ This report embraces No. 11817 (Sub-No. 1), *Jesse P. Barnett v. Same*.

Of the total number of bales, 8,146 were shipped by complainant in No. 11817 and 1,663 bales by complainant in Sub-No. 1. All moved uncompressed from points within the State of Louisiana served by Morgan's Louisiana & Texas, Louisiana Western, and Iberia & Vermilion to Opelousas for concentration, and after being compressed there were reshipped over Morgan's Louisiana & Texas and other Southern Pacific lines to Galveston and Houston, Tex., San Francisco, Calif., and Seattle and Tacoma, Wash.

Charges on shipments inbound to Opelousas were assessed at local intrastate rates per bale not exceeding 535 pounds. These were 95 cents from Kaplan and Mamou; 90 cents from Abbeville; 75 cents from Arnaudville, Breaux Bridge, Jennings, Lake Charles, New Iberia, and Welsh; 50 cents from Barbreck, Carencro, Lafayette, Mouton Switch, Sunset, Washington, and Whiteville; and 60 cents from Cheneyville, Duson, Gold Dust, and Scott; plus, in each case, 15 cents per 100 pounds, the specific increase in cotton rates authorized by General Order No. 28.

Complainants allege that charges on the outbound shipments were assessed at joint rates per 100 pounds of 78 cents to Galveston and Houston, \$1.25 to San Francisco, and \$1.80 to Seattle and Tacoma. These outbound rates also included the 15-cent increase authorized by General Order No. 28. The outbound rates to San Francisco, Seattle, and Tacoma were export rates. The tariff reference given by complainants for the 78-cent rate to Galveston and Houston was an export tariff. The joint export rate to the latter points was 47 cents and it appears that shipments to those points may have been overcharged.

During the period of movement a tariff of defendant contained transit rules allowing cotton shipped over the same lines from the same points of origin in Louisiana to be compressed at Opelousas and reshipped to New Orleans, Algiers, and Gretna, La. This tariff, applicable on intrastate traffic only, named "gross" and "net" inbound rates, also outbound rates, and, upon reshipment from Opelousas, provided for refund of the gross inbound rates to the basis of the net inbound rates. Transit arrangements first became applicable on interstate traffic generally on April 1, 1919, as the result of an application made by complainants' attorney on or about August 20, 1918. Similar transit arrangements were provided during the period of movement on shipments over the New Orleans, Texas & Mexico from Louisiana points to Opelousas for compression and reshipment to interstate destinations.

A joint domestic commodity rate of \$1.40 was in effect from the points of origin of the uncompressed cotton to San Francisco, a joint export commodity rate of \$1.40 to Tacoma and Seattle, and a

joint export commodity rate of 47 cents to Galveston and Houston. These rates were applicable on cotton compressed at point of origin or en route and were subject to the general transit rules of the originating lines. If these transit rules of the originating lines, applicable at Opelousas, had been complied with, the \$1.40 rate would have been applicable on the shipments to San Francisco, also on those to Tacoma and Seattle if for export, as apparently they were, and the inbound rates to Opelousas would have been refunded. The same would have been true as to the 47-cent rate to Galveston and Houston, if the shipments to those points were for export. But it appears that the transit rules were not complied with.

It is testified that shipments were made to Opelousas on local bills of lading from points on the Texas & Pacific and the Texas, New Orleans & Mexico, such as Eunice and Lewisburg, at rates per bale or per 100 pounds, plus 15 cents per 100 pounds; that after compression the cotton was reshipped on new bills of lading at rates which also included an increase of 15 cents; and that, upon surrender of the inbound freight bills and copies of outbound bills of lading covering an equal number of bales, refund was made of 15 cents per 100 pounds, under rules eliminating double increases in combination rates on through shipments, and of an amount for concentration and compression, as provided in the transit tariffs. The gross rate from Eunice to Opelousas, applicable on interstate traffic, was 35 cents per 100 pounds, equivalent to \$1.87 per bale of 535 pounds; that from Lewisburg to Opelousas, applicable on intrastate traffic only, was 65 cents per bale of 535 pounds or less. The distances are less than from the points of origin which had the 50-cent gross rate. The net rates were 6 cents per 100 pounds and 25 cents per bale, respectively, less than the gross rates, or \$1.55 and 40 cents per bale.

The tariffs naming the inbound and outbound rates applicable on the shipments here considered provided that, when the total charges on a through shipment were constructed on combinations of separately established rates, the specific increase of 15 cents per 100 pounds should be added to the combinations in effect on June 24, 1918. This rule was similar to those in effect over all other lines in and out of Opelousas. The rule for eliminating the double increase was not applied to complainants' shipments for the reason that defendant properly considered the shipments inbound and outbound as separate and distinct. Complainants do not question the applicability of the charges assessed.

There was no local consumption of cotton at Opelousas and all cotton shipped into that point was for concentration, compression, and reshipment. From a transportation standpoint these ship-

ments were handled in the same manner as those on which transit arrangements applied.

The effect of the failure of the director general to provide similar transit arrangements at Opelousas on interstate and export shipments over lines of the Southern Pacific system as on intrastate shipments to New Orleans, Algiers, and Gretna is illustrated as follows: Prior to June 25, 1918, the gross intrastate rate from Lafayette to Opelousas was 50 cents per bale and when reshipped to New Orleans, Algiers, or Gretna, 25 cents per bale was refunded to the inbound intrastate shipper. On that date the gross rate was increased 15 cents per 100 pounds, or to \$1.305 per bale of 535 pounds. When the cotton was reshipped intrastate to New Orleans, Algiers, or Gretna over the line of Morgan's Louisiana & Texas Railroad & Steamship Company \$1.055 per bale, or 25 cents per bale plus 15 cents per 100 pounds, was refunded. On interstate or export shipments to points to which through rates were published, refund of the entire inbound charges was made if the outbound rate from the transit point was no higher than the through rate from point of origin to destination. On interstate or export shipments to other points, to which no through rates were published, no refund whatever was made.

Complainants introduced no evidence which shows that the rates assailed were unreasonable *per se*. What they in effect seek is the retroactive application of a transit service. We do not ordinarily give retroactive effect to a transit service in the absence of unjust discrimination or undue prejudice and damage thereunder. *Freeman v. S. Ry. Co.*, 42 I. C. C., 736; *Burritt Co. v. C. P. Ry. Co.*, 45 I. C. C., 195; *Eagle Pass Lumber Co. v. G., H. & S. A. Ry. Co.*, 48 I. C. C., 693.

All of the shipments here considered appear to have been exported. If they had been forwarded from Opelousas as export shipments, transit service would have been available on all of them. Transit service was available on at least some of them, but the transit rules were not complied with. If it were then available on all of them, there is nothing of record to show that the transit rules would have been complied with. They were not complied with as to shipments on which the service was available.

We find that neither the charges assailed nor defendant's failure to provide transit arrangements applicable at Opelousas on all interstate traffic was unreasonable. The complaints will be dismissed.

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No. 11591.¹

ALASKA JUNK COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, ET AL.

Submitted September 28, 1921. Decided May 8, 1922.

1. Rates charged on scrap iron, in carloads, from Bellingham and Sedro Woolley to Seattle, Wash., during Federal control, found not unreasonable or otherwise unlawful.
2. Reconsignment charges on six carloads of scrap iron, shipped from Bellingham to Seattle, found not unreasonable.
3. Complaints dismissed.

Emuel J. Forman for complainants.*F. M. Dudley* and *A. J. Laughon* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are corporations dealing in junk. The Alaska Junk Company and the Northwestern Junk Company are at Seattle, Wash., and the Bellingham Junk Company at Bellingham, Wash. They allege by complaints filed June 28, 1920, that the rates charged on scrap iron, in carloads, from Bellingham and Sedro Woolley, Wash., to Seattle, during Federal control, were unjust, unreasonable, and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act; and that reconsignment charges of \$15 assessed at Seattle on six shipments were unreasonable and illegal. The prayer is for reparation. The complaint in Sub-No. 2 was withdrawn at the hearing. Rates will be stated in cents per 100 pounds.

L. Schuman, D. Schuman, and N. Schuman, formerly engaged in business as copartners under the firm name of the Bellingham Junk Company, intervened at the hearing.

The shipments moved intrastate over lines under Federal control. The applicable charges were collected, except that certain shipments

¹ This report also embraces No. 11591 (Sub-No. 1), Bellingham Junk Company v. Same, and No. 11591 (Sub-No. 2), Northwestern Junk Company v. Director General, as Agent, and Great Northern Railway Company.

were overcharged or undercharged for reconsignment services and one shipment, which weighed 40,340 pounds and moved over the Chicago, Milwaukee & St. Paul, was undercharged \$6.59 for barge service. A class C rate of 12 cents, minimum 30,000 pounds, was collected, whereas the class D rate of 11 cents, minimum 50,000 pounds, was applicable.

Bellingham is 99.9 miles north of Seattle between the latter and Vancouver, British Columbia, 157 miles from Seattle over the Great Northern. Sedro Woolley is 78 miles north of Seattle between that point and Vancouver, 187 miles from Seattle over the Northern Pacific. These lines are for the most part parallel. A branch of the Great Northern extends eastwardly from Burlington, Wash., and intersects the Northern Pacific's line at Sedro Woolley. Concrete, Wash., is on the latter, 23 miles east of Sedro Woolley.

On June 24, 1918, there was in effect over both lines from Vancouver to Seattle a carload commodity rate on scrap iron of 10 cents, which on June 25, 1918, was increased to 12.5 cents. The class D rates to Seattle from Bellingham over both lines and from Sedro Woolley over the Northern Pacific, were 11 and 14 cents, on these respective dates, but from Sedro Woolley over the Great Northern they were the same as from Concrete, 10 and 12.5 cents, respectively. The minimum applicable in connection with the Vancouver and Concrete rates was 40,000 pounds. The class D rates from Bellingham were subject to a minimum of 50,000 pounds. Complainants contend that the rates charged on the shipments under consideration were unreasonable and in violation of the fourth section to the extent that they exceeded the rates from Vancouver.

Complainants refer to a 10-cent rate on scrap iron prior to June 25, 1918, from Aberdeen, Wash., and Portland, Oreg., to Seattle, 140 and 181 miles, respectively, and a 9-cent rate, canceled prior to the hearing, from Portland to Lakeview, Wash., 135 miles.

A violation of the long-and-short-haul provision of the fourth section is alleged. The shipments were intrastate and the fourth section of the interstate commerce act does not apply to them. Departures on interstate traffic from and to the points here considered are protected by fourth section orders issued by us.

Defendants show that the 10-cent Vancouver rate was established in 1906, because of water competition, and refer to a rate of 10 cents applicable by water in 1908 from Vancouver to Seattle. They state that competitive conditions were about the same in 1906 as in 1908, and that when the assailed rates from Bellingham were in effect the water rates from Bellingham to Seattle were higher than the rail rates. The Bellingham rates are lower than rates obtained by applying the distance scale prescribed in 1912 by the Washington

State commission, as increased in accordance with General Order No. 28 of the Director General of Railroads. If the four shipments which moved from Sedro Woolley had been tendered to the Great Northern instead of to the Northern Pacific complainants would have received the benefit of the rates from Concrete.

With reference to the issue of the unreasonable and illegal reconsignment charges, complainants based their contentions upon the ground that the delivery instructions furnished to the Great Northern were not reconsignment orders but placement orders, and that they were entitled to placement of the cars without charge.

The Great Northern's tariff governing diversion or reconsignment to points within switching limits before placement permits a single change in the name of consignee at destination, or a single change in or a single addition to designation of his place of delivery at destination, without charge, if the order be received prior to the arrival of the car, but provides a charge of \$2 per car if the order be received within 24 hours after arrival, and a charge of \$5 per car if the order be received more than 24 hours after the arrival. The six shipments considered were shipped over the Great Northern from Bellingham to Seattle, consigned simply to complainant, Alaska Junk Company, which has five yards at Seattle in different parts of the city. The testimony shows that the instructions relative to the place of delivery of these shipments were not furnished the carrier until after their arrival. The tariff provision seems to be reasonable. A similar rule was not condemned by us in *Rockford Lumber & Fuel Co. v. Director General*, 60 I. C. C., 217.

We find that the rates and reconsignment charges assailed were not unreasonable or otherwise unlawful. The complaints will be dismissed.

68 I. C. C.

No. 11271.¹

ALABAMA-GEORGIA SYRUP COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATLANTIC COAST
LINE RAILROAD COMPANY, ET AL.

Submitted September 2, 1921. Decided May 8, 1922.

1. Rates charged on carload and less-than-carload shipments of cane syrup, in barrels, from certain points in Florida to Montgomery, Ala., found unreasonable. Reasonable maximum rates prescribed for the future and reparation awarded.
2. Present carload rate from Live Oak, Fla., to Montgomery found not unreasonable.

M. M. Caskie for complainant.*Frank W. Gwathmey* and *Henry Thurtell* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

These cases were separately heard, and proposed reports were served upon the parties. The exceptions filed by complainant in No. 11271 are applicable also in No. 12058.

Complainant, a corporation refining table syrups at Montgomery, Ala., by complaints filed February 26 and December 21, 1920, alleges that the rates charged during Federal control on certain shipments of cane syrup in barrels, in carloads and less than carloads, from Live Oak, Madison, and Monticello, Fla., to Montgomery were unreasonable. We are asked to award reparation and to prescribe reasonable rates for the future. Rates will be stated in cents per 100 pounds, and do not include the general increase of 1920, except as noted.

Live Oak, Madison, and Monticello are in northern Florida, on the Seaboard Air Line, hereinafter called the Seaboard, 81, 109.6, and 142.1 miles, respectively, west of Jacksonville, Fla. Through this junction the route is indirect. The shipments moved over the following more direct routes: From Live Oak, 329 miles, over the single line of the Atlantic Coast Line, hereinafter called the Coast

¹ This report also embraces No. 12058, Alabama-Georgia Syrup Company v. Director General, as Agent, Atlantic Coast Line Railroad Company, et al.

Line, through Haylow, Ga., 37 miles north of Live Oak and Dupont; from Madison, 281 miles, over the Georgia & Florida, 28 miles to Valdosta, Ga., and the Coast Line beyond; and from Monticello, 234 miles, over the single line of the Coast Line through Metcalf, Ga., 14 miles north of Monticello and Thomasville. Two of the shipments from Live Oak originated on the Seaboard and were delivered to the Coast Line at that point. This is the extent of the Seaboard's participation in these hauls, and that carrier was not named as a defendant in No. 12058. Two carloads moved from Madison and one from Monticello.

Charges were collected at the applicable rates, as follows: From Live Oak, combination commodity rates of 50.5 cents, carloads, and 63 cents, less than carloads, composed of 14 cents, any quantity, to Jacksonville and 36.5 cents, carloads, and 49 cents, less than carloads, beyond; from Madison, combination of 34.5 cents, made up of an any-quantity distance class R rate of 13 cents to Valdosta and a specific carload rate of 21.5 cents beyond; and from Monticello, an any-quantity distance commodity rate of 35 cents. Generally speaking, in the absence of specific joint rates the established basis for making rates from points in Florida, including Live Oak and points east and south thereof, to interstate destinations, is the Jacksonville combination.

When the shipments moved a carload rate of 21.5 cents to Montgomery was in effect over the Seaboard from Monticello and Ellaville, Fla., the latter a point 13.4 miles west of Live Oak, and rates of 21.5 cents, carloads, and 25 cents, less than carloads, over the Coast Line from Suwanee, Fla., 7 miles north of Live Oak, and from Haylow and points in Georgia and Florida of about the same average distance from Montgomery.

A joint rate to Montgomery of 21.5 cents, any quantity, also applied from Ellaville in connection with the Georgia & Florida and the Coast Line through Madison and Valdosta, and through Monticello in connection with the Coast Line alone. Complainant seeks reparation to the basis of these rates, and rates for the future upon the same basis with the addition of the general increase of 1920. These departures from the provisions of the fourth section were protected by appropriate applications not set for hearing herewith.

Among other comparisons cited by complainant were rates of 27.5 cents, carloads, and 32.5 cents, less than carloads, from Ellaville to New Orleans, La., 516 miles, and from Greenville, Fla., to Memphis, Tenn., 591 miles; 27.5 cents, any quantity, from numerous points on defendants' lines in the vicinity of Live Oak to Birmingham, Ala., for an average distance of 348 miles, and 35 cents, any quantity, from Montgomery to Richmond, Va., 727 miles.

There was no movement of syrup from the points of origin here under consideration to Montgomery prior to the few shipments covered by the complaints. Defendants concede, in effect, that the rates charged were out of line with the rates from Florida points in the vicinity, but contend that the 21.5-cent blanket rate sought by complainant was subnormal. It became effective June 25, 1918, under General Order No. 28 of the Director General of Railroads. The rate prior to that time was 17 cents, established many years ago to enable cane growers in southern Georgia and northern Florida to meet a similar carload rate then in effect from New Orleans to Montgomery, 318 miles. The rate from New Orleans was subsequently increased to 22 cents, and again to 26 cents on January 21, 1916, under the readjustment then made effective following *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and 32 I. C. C., 61. No corresponding increases were made in the Georgia-Florida blanket rates, and this complainant, in *Alabama-Georgia Syrup Co. v. L. & N. R. R. Co.*, 58 I. C. C., 521, relied in part upon these rates to support its contention that the 26-cent rate from New Orleans to Montgomery was unreasonable, a contention which was not sustained. The New Orleans-Montgomery rate was increased on June 25, 1918, under General Order No. 28, to 32.5 cents, further increased to 40.5 cents under our permission of July 29, 1920, and subsequently reduced to the present rate of 36.5 cents to comply with the fourth section order entered by us in connection with the case last above cited.

At the hearing in No. 11271, on May 1, 1920, the defendant carriers proposed to establish from Live Oak to Montgomery rates of 34 cents, carloads, and 42.5 cents, less than carloads, and compared these proposed rates with many other rates, the most representative of which range from 31.5 to 46.5 cents, carloads, and from 42.5 to 59 cents, less than carloads, from Louisville, Ky., Memphis, New Orleans, Jacksonville, and Savannah, Ga., to points in the Southeast, for hauls of substantially the same or shorter distances. Other comparisons indicate that the rates proposed also compare favorably with rates for like and shorter distances from points in Louisiana and Texas to points in Arkansas and Oklahoma established by the carriers following *Molasses from Texas and Louisiana*, 40 I. C. C., 435.

On December 30, 1920, defendants made effective rates of 42.5 cents, carloads, and 53 cents, less than carloads, from Live Oak to Montgomery, which are the rates proposed at the hearing in No. 11271 increased by 25 per cent to correspond with the increases authorized by us on July 29, 1920. The present rate from Monticello is 44 cents over the Coast Line, and from Madison, 43.5 cents, the latter a combination of 16.5 cents to Valdosta and 27 cents beyond.

These likewise reflect the general increase. When the reduced rates from Live Oak were published the carriers did not make a contemporaneous revision of rates from the surrounding territory, the present rate to Montgomery from Ellaville and grouped points on the Seaboard being 27 cents, any quantity, and from Haylow and grouped points on the Coast Line 27 cents, carloads, and 31.5 cents, less than carloads.

In *Meridian Traffic Bureau v. S. Ry. Co.*, 60 I. C. C., 5, we prescribed, among other things, scales of rates on syrup, in carloads from Meridian, Miss., to points in Alabama on the Southern and Alabama Great Southern, and on the Mobile & Ohio, for distances up to 200 miles. Extended to 234, 281, and 329 miles, the distances in the present cases, the application of the average of those scales would result in carload rates of approximately 30, 32, and 34 cents, respectively, subject to the increase of 1920.

Shipments from Live Oak ordinarily move by way of Haylow, and the present combination of rates on Haylow is 42.5 cents, carloads, and 47 cents, less than carloads. The latter is thus 6 cents less than the specific less-than-carload rate. The present carload rate from Monticello to Metcalf, 12.5 cents, if added to the factor from Metcalf to Montgomery, 27 cents, produces a combination of 39.5 cents, which is less by 4.5 cents than the specific rate from Monticello to Montgomery. These departures from the provisions of the fourth section are not protected and are unlawful.

The aggregate of intermediate rates applicable to and beyond Haylow when the shipments moved from Live Oak was 34 cents, carloads, and 37.5 cents, less than carloads, composed of a distance commodity rate of 12.5 cents, any quantity, to Haylow and commodity rates of 21.5 cents, carloads, and 25 cents, less than carloads, beyond. The aggregate of the intermediate rates applicable to and beyond Metcalf when the shipments moved from Monticello was 31.5 cents, composed of a distance commodity rate of 10 cents to Metcalf and 21.5 cents beyond. We have repeatedly found that a through rate which exceeds the aggregate of the intermediates over the route of movement is prima facie unreasonable. That presumption is not rebutted by the record.

We find that the rates charged were unreasonable to the extent that they exceeded the following rates, in cents per 100 pounds: From Monticello, 31.5 cents, carloads; from Madison, 33 cents, carloads; and from Live Oak, 34 cents, carloads, and 37.5 cents, less than carloads; that the present carload rates from Monticello and Madison are, and for the future will be, unreasonable to the extent that they exceed 39.5 cents and 41 cents, respectively; that the present less-than-carload rate from Live Oak is, and for the future will be,

unreasonable to the extent that it exceeds 47 cents; and that the present carload rate from Live Oak is not unreasonable.

We further find that the complainant made the shipments as described, and paid and bore the charges thereon at the rates herein found unreasonable; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued on the bases of the rates herein found to have been reasonable; and that it is entitled to reparation, upon the shipments from Madison and Monticello involved in No. 12058, in the sum of \$22.23, with interest. With respect to the shipments from Live Oak covered by No. 11271 complainant should comply with Rule V of the Rules of Practice.

An appropriate order will be entered.

68 I. C. C.

No. 12122.
TRAFFIC BUREAU OF NASHVILLE
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted December 9, 1921. Decided May 2, 1922.

Less-than-carload rating of second-class on salted peanuts in fiber or metal cans or cartons, in barrels or boxes; in metal cans in crates; and in pails; and the any-quantity rating of fourth class on cotton-picking sheets and cotton-picking bags, in southern classification, found not unreasonable or unduly prejudicial. Complaint dismissed.

T. M. Henderson for complainant.

E. K. Voorhees for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By Division 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a voluntary association of merchants, manufacturers, and shippers of Nashville, Tenn., brings this complaint on behalf of two of its members, the Fletcher & Wilson Coffee Company, a partnership, and the Werthan Bag Company, a corporation, hereinafter referred to as the coffee company and the bag company. It alleges that the less-than-carload rating in southern classification of second class on salted peanuts in fiber or metal cans or cartons, in barrels or boxes, in metal cans in crates, and in pails, and the any-quantity rating in that classification of fourth class on cotton-picking sheets and cotton-picking bags, in bales, boxes, or bundles, have been and are unreasonable and unduly prejudicial to the extent that the rating on salted peanuts exceeds third class and on the sheets and bags exceeds fifth class, less than carloads, and sixth class, carloads, minimum 30,000 pounds. We are asked to prescribe just and reasonable ratings for the future.

SALTED PEANUTS.

Prior to August 15, 1920, the southern classification rating on salted peanuts in these containers, in less than carloads, was third class, except metal cans in crates, on which no rating was provided. On

that date the rating in all of the named containers was made second class. Complainant estimates that the change resulted in an increase of approximately 15 per cent in the carriers' revenue on this traffic.

The bulk of the salted peanuts shipped by the coffee company is put up in small fiber cartons, although 10-pound fiber containers are used to some extent. The use of metal cans has been discontinued for the present because of their high cost. The outer containers principally used are fiber boxes. The coffee company does not ship in pails or glass. Its sales of salted peanuts amount to about \$200,000 annually.

Complainant compares the assailed rating with southern classification ratings of third class and lower on numerous articles of food and confectionery. The following table illustrates these comparisons and shows the present ratings in official and western classifications and those suggested for the southern in Appendix 6 to *Consolidated Classification case*, 54 I. C. C., 1:

		Present.			Suggested in Ap- pendix 6.
		Official.	Southern.	Western.	
Peanuts: Salted—	barrels or boxes,	R25	2	2	2
	.....	2	2	2	2
	.....	R25	2	2	2
	.....	3	4	2	3
	.....	3	3	2	2
	l. c. l.	2	3	2	2
	ra, matzos, pret-				
	iron or steel con-				
	l. c. l.	2	3	3	3
	.....	2	2	3	2
	rrrels or boxes, or	2	2	2	2
	ls or boxes, or in	3	3	3	3
	wood into forms	1	2	3	3
	l.	R25	3	3	3

A witness for complainant testified that salted peanuts are in competition with other nuts, candy, and roasted peanuts in the shell, but the record does not indicate the extent or the effect of the competition. Complainant's evidence bears principally on the allegation of unreasonableness.

The articles with which complainant has made comparison are generally rated lower than salted peanuts in the southern classification when shipped in containers or packages comparable to those here considered, but many of them take second class or higher when shipped in containers or packages of other kinds in less than carloads. For example, candy in glass or earthenware is rated second

class; peanut butter, in glass or earthenware, packed in barrels or boxes, or in pails, metal cans completely jacketed, and in pails in boxes or crates, second class; popped corn or puffed rice confectionery in balls, in barrels or boxes, second class; bakery goods, in fiber or metal cans with glass fronts, glass protected by corrugated fiber board or wood, or without glass fronts, in crates, and in fiber or metal cans without glass fronts, in shipping racks, second class; and bakery goods, in cartons in crates, first class. Shelled nuts other than peanuts, except when packed in sirup or liquor, are rated first class or higher, any quantity, in the southern classification. The movement of candy of all kinds is much larger than that of salted peanuts. Bakery goods also move in larger volume.

The average value of salted peanuts, except those packed in glass, is estimated by complainant at \$5 per cubic foot, and the average weight 35 pounds per cubic foot. By comparison, the average weight of candy, which is referred to frequently of record, is about the same as that of salted peanuts, and the value from 20 to 500 per cent greater. Similar comparisons with other articles, such as roasted peanuts, corned beef, popped corn, corn flakes, peanut butter, dried beef, and evaporated peaches give varying results; in some instances both the weight and the value per cubic foot of the article are less than those of salted peanuts; in other instances the reverse is true; and in still others the weight is less and the value greater.

Defendants compare the southern classification ratings on salted peanuts and other articles, including peanut butter, bakery goods, candy or confectionery, and shelled nuts, with the ratings in official and western classifications. These comparisons are illustrated by the foregoing table. Salted peanuts are rated second class in all three classifications, except that rule 25 applies in official classification when shipped in fiber or metal cans or cartons, in barrels or boxes, in pails, and in bulk in barrels or boxes. The southern classification ratings on the other articles, most of which are to be found in complainant's comparisons, compare favorably with the ratings thereon in the other classifications. In many instances the ratings are the same in all classifications, and, where there is a difference, the rating in the southern frequently is lower. Defendants refer to the ratings on these articles because they are mentioned in the complaint as illustrating the alleged discriminatory character of the rating on salted peanuts, and apparently not because of any analogy between such articles and salted peanuts.

Defendants assert that the rating of third class on candy and other confectionery in southern classification is subnormal and should be advanced. They state that a proposal to establish a rating of second class is now before the Consolidated Classification Committee.

Candy in all styles of packages, in less than carloads, is rated second class in official and western classifications. The rating in western classification was found justified in *National Confectioners' Asso. v. A. & R. R. R. Co.*, 49 I. C. C., 566. An increase to second class in official classification territory was approved by us in the *Consolidated Classification case, supra*.

From the admission of defendants' witness that pails and crates are less desirable outside containers than barrels and boxes and that articles so shipped may properly be rated higher, complainant draws the inference that salted peanuts in barrels or boxes should not be rated as high as when shipped in the less desirable packages. Complainant also points out that, where the southern classification provides ratings on articles when packed in glass and when packed in fiber or metal cans or cartons, such articles in cans or cartons are generally rated lower than in glass, whereas salted peanuts are rated the same in metal cans or cartons as in glass. The record does not afford a basis for determining whether these distinctions, if warranted in the case of salted peanuts, should be made by increasing the rating on the one type of package, or inner container, or reducing that on the other.

The rating here sought on salted peanuts in the specified containers, third class, is that applying on shipments in bulk in barrels or boxes. While there are exceptions, articles in inner containers are generally rated higher than when shipped in bulk, inasmuch as the better grades are usually shipped in inner containers, and the value of articles so shipped, as a rule, is higher per unit than when shipped in bulk. No reason is apparent for departing from this general practice with respect to the ratings on salted peanuts.

The assailed rating compares favorably with the ratings on salted peanuts in the official and western classifications, and is the same as that suggested in Appendix 6, *Consolidated Classification case, supra*. The analogy between salted peanuts and other lower-rated articles with which complainant has made comparison is not so close as to warrant the conclusion that the rating on salted peanuts is unreasonably high. Some of the articles move in larger volume than salted peanuts. A particular element, if considered alone, might appear to warrant a higher or lower rating on an article than would be justified if all proper elements are taken into consideration.

COTTON-PICKING SHEETS AND BAGS.

The regulation cotton-picking sheet is described as being about 80 by 80 inches in size, and is usually made of 7.5 to 10 ounce burlap. Its manufacture consists of sewing together two pieces of burlap and sometimes hemming the edges. It is spread on the ground in

the cotton field and the cotton is placed thereon as picked. The cotton-picking bag is made of burlap and, except that it is equipped with a strap by means of which it may be carried from the shoulder, does not differ from the ordinary burlap bag. The value of cotton-picking sheets is estimated by complainant at approximately \$199 per thousand. Burlap bags containing the same yardage are said to be worth about \$2 more. On a basis per 100 pounds the sheets are worth about \$9 and burlap cloth about \$7.75. The value of cotton-picking bags is not shown, but would exceed that of burlap bags at least by the cost of the strap.

Complainant asks the establishment of the same ratings on these articles as apply on burlap cloth and burlap bags, namely, fifth class, in bales, boxes, or rolls, in less than carloads, and sixth class, carloads, minimum 30,000 pounds. It contends in substance that, inasmuch as cotton-picking sheets and burlap bags are made from the same material, are of approximately the same value on a yardage basis, and are shipped in bales of the same kind and density, it is improper to apply a higher rating on the sheets than on burlap bags. It contends further that if cotton-picking sheets were sewed together at the sides and bottom they would become large burlap bags and be subject to the burlap-bag ratings.

The use of cotton-picking sheets is confined to a period of about two months in the year. The bag company's output of sheets amounts to less than 10 per cent of its burlap-bag business, but it claims that with proper freight rates its output of the former will increase. It ships burlap bags daily in carload quantities. The cotton-picking sheets are shipped principally in less-than-carload lots. The bag company made only one carload shipment of sheets in 1919, and none apparently in 1920. It has shipped no cotton-picking bags from Nashville, but states that it has made some shipments from its branch at Houston, Tex. The volume of its shipments from the latter point is not shown.

Defendants state that the southern classification ratings on burlap bags are unduly low as compared with the ratings in the other classifications. The ratings on burlap bags are intended primarily to cover burlap shipping containers. There is a large movement of burlap shipping bags, while the movement of the special types, such as cotton-picking bags, is small. The rating on cotton-picking sheets is but one class higher than that on burlap cloth in less than carloads, whereas the rating on cotton sheeting in the original piece is fourth class, any quantity, as compared with first class, any quantity, when cut to size and hemmed. Cotton-picking sheets and bags are rated, respectively, first and second class, any quantity, in western

classification territory, where a large part of the cotton crop of the country is produced.

The ratings on all of the articles mentioned are substantially lower in southern than in the other classifications, as shown by the following:

	Less than carloads.			Carloads.		
	Official.	South- ern.	West- ern.	Official.	South- ern.	West- ern.
Bags, burlap or gunny, new, not lined, in bales, boxes, or rolls.....	3	5	3	4	6	4
Burlap or gunny bagging, or burlap or gunny cloth, new or old, n. o. l. b. n., other than paper lined.....	3	5	3	4	6	5
Bags, cotton picking, in bales, boxes, or bundles.....	¹ 1	4	2	.....	.....	.....
Sheets, cotton picking, in bales or boxes.....	¹ 1	4	1	.....	.....	.....

¹ Any quantity.

Defendants express a generally recognized principle of classification in their contention that manufactured articles may be rated higher than the material from which they are made. For example, burlap barrel covers, which are plain squares of burlap cloth, are rated first class, in less than carloads, in southern classification. The ratings on burlap bags are not in accord with this principle, but they have doubtless been influenced in part by the large volume in which shipping bags move. The record discloses no discrimination against cotton-picking sheets and bags by reason of this different treatment of burlap bags.

We find that the southern classification ratings here assailed are not unreasonable or unduly prejudicial. The complaint will be dismissed.

No. 12212.
HUMBLE OIL & REFINING COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted January 6, 1922. Decided May 2, 1922.

Rate on crude oil in tank-car loads, from Iowa Park, Tex., to New Orleans, La., found not unreasonable. Complaint dismissed.

J. R. Davis for complainant.

Fred L. Wallace for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation engaged in the oil business with its principal office at Houston, Tex. By complaint filed January 25, 1921, it alleges that the rate of 29 cents charged on 21 tank-car loads of crude oil shipped during February, 1919, from Iowa Park, Tex., to New Orleans, La., was unreasonable to the extent that it exceeded 22 cents. Reparation is asked. Rates are stated in cents per 100 pounds.

Iowa Park is a local station on the Fort Worth & Denver City approximately 125 miles northwest of Fort Worth. The shipments, aggregating 1,450,991 pounds, moved as routed by complainant over the Fort Worth & Denver City to Fort Worth, Tex., Trinity & Brazos Valley to Houston, Tex., Beaumont, Sour Lake & Western to Sabine River, Tex., and the New Orleans, Texas & Mexico beyond, 753 miles. Charges were assessed at the applicable combination commodity rate of 29 cents, based on Fort Worth. The 22-cent commodity rate, to the basis of which complainant seeks reparation, was published to become effective February 1, 1919, over certain lines, not including the Trinity & Brazos Valley, and on March 3, 1919, over all other lines.

The rates to New Orleans from points in Kansas and Oklahoma are generally on a somewhat lower basis, distance considered, than is the rate assailed. On the other hand, the former are lower than rates prescribed or approved by us for application in this general territory.

Defendant directs attention to the rates found reasonable in *Mid-continent Oil Rates*, 36 I. C. C., 109, and in other cases. In the case cited we prescribed specific maximum rates on refined oils and rates on low-grade oils, including crude oil, 5 cents under the refined-oil rates.

A comparison of the rate charged with rates there prescribed on crude oil to representative destinations, as subsequently increased during Federal control, together with the ton-mile and car-mile earnings, follows:

Haul.	Distance.	Rate.	Ton-mile earnings.	Car-mile earnings. ¹
	Miles.	Cents.	Mills.	Cents.
Iowa Park to New Orleans.....	753	29	7.7	27.77
Kansas and Oklahoma to —				
St. Louis.....	412	19.5	9.46	34.06
Chicago.....	620	24.5	7.9	28.45
Milwaukee.....	719	29.5	8.20	29.54
St. Paul.....	685	30.5	8.90	32.07

¹ At average weight of complainant's shipments.

In *Akin Gasoline Co. v. Director General*, 57 I. C. C., 136, we found the rates on liquefied petroleum gas from Electra, Tex., on the Fort Worth & Denver City 15 miles west of Iowa Park, to North Baton Rouge, La., 581 miles, unreasonable to the extent that they exceeded the rates contemporaneously in effect from Wichita Falls, Tex. Prior to August 1, 1918, the rate from Wichita Falls was 41.5 cents and subsequent thereto 37.5 cents. Allowing for the 5-cent differential, crude under refined oils, defendant contends that this case virtually approved a rate of 32.5 cents on crude oil from and to the points named. When these shipments moved the rate on refined oils from Iowa Park to New Orleans was 34.5 cents, or 5.5 cents higher than the rate assailed.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

63 I. C. C.

No. 12389.

CROWN WILLAMETTE PAPER COMPANY
v.
DIRECTOR GENERAL, AS AGENT, NEW YORK CENTRAL
RAILROAD COMPANY, ET AL.

Submitted August 22, 1921. Decided May 8, 1922.

Applicable rates on pulp and paper making machinery from defined territory east of the Missouri River to Camas, Wash., and West Linn, Oreg., found not to have been or to be unlawful. Refund of overcharges on shipments of certain kinds of machinery directed. Complaint dismissed.

John J. Seid for complainant.

Charles A. Hart for director general and transcontinental carriers.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation manufacturing wood pulp and paper, by complaint filed February 23, 1921, alleges that class A rates on pulp and paper mill machinery, in carloads, shipped since February 28, 1919, from various points in States east of the Missouri River in so-called defined territory to plants of the complainant located at Camas, Wash., and West Linn, Oreg., were unjust, unreasonable, and unduly prejudicial to the extent that they exceeded lower commodity rates on electrical, ironworking (power), mining, smelting, and sugar-making machinery, contemporaneously applicable from the same originating territory to western destinations. We are asked to award reparation and to prescribe reasonable and nonprejudicial rates for the future. Rates will be stated in cents per 100 pounds.

The shipments moved from Green Bay, Wis., Watertown, N. Y., Pittsfield, Mass., and Barberton, Ohio, to Camas, and from Barberton, Toledo, and Dayton, Ohio, Nashua, N. H., Watertown and Schenectady, N. Y., Pittsfield, Mass., South Norwalk, Conn., Trenton, N. J., and York, Pa., to West Linn. Camas is 12 miles east of Vancouver, Wash., at the confluence of the Willamette and Columbia Rivers; West Linn is on the Willamette River, 12 miles southwest of Portland, Oreg. Camas took and takes rates applicable to Pacific coast terminal points; West Linn took and takes arbitraries over Portland, which were, prior to August 26, 1920, 9.5 cents on pieces

of machinery weighing less than 2,000 pounds and 12.5 cents on pieces of machinery weighing more than 2,000 pounds. On that date these arbitraries were increased to 12.5 and 16.5 cents. The points of origin in all of the States, except Ohio and Wisconsin, are, on westbound transcontinental traffic, in group territory designated Group A. Points in Ohio are in Groups B and C, and those in Wisconsin in Group D. Prior to August 26, 1920, the class A rates governed by the western classification from these defined groups to Pacific coast terminals ranged from \$2.40 from points taking Group A rates to \$2.15 from points taking Group E rates. Their increase by $33\frac{1}{4}$ per cent on that date resulted in rates ranging from \$3.20 to \$2.865. Charges were assessed at these class A rates.

Of the 66 carloads included in the claim for reparation, one of rolls from Watertown and one of paper-mill machinery from Ansonia, Conn., were shipped to Portland and are not in issue. Of the remainder, 32 consisted of paper-mill machinery, one of screening machinery, one of paper-mill rolls, four of dryers, and two of machinery not otherwise designated. Nine cars consisted of water-wheel parts, two of boilers, one of boilers and boiler tubes, one of pumps and motors, one of pumps, five of electrical machinery, two of generators, two of motors, and one of transformers. Some of the articles shipped in mixed carloads were identical with or analogous to articles used in electrical, ironworking, mining, smelting, and sugar-making plants. From March 15 to June 25, 1918, commodity rates of \$1.56, \$1.56, \$1.50, \$1.40, and \$1.35 applied respectively from Groups A, B, C, D, and E on "Machinery and Machines, viz: machinery (electrical, ironworking (power), mining, smelting, not including oil well or well boring machines), consisting of" certain named articles, including turbines and parts thereof, water wheels, boilers, pumps (not hand pumps), motors, generators, and transformers. It will be noted that 24 of the shipments appear to come within these particular descriptions and that 40 do not. These commodity rates were increased 25 per cent, effective June 25, 1918, and $33\frac{1}{4}$ per cent effective August 26, 1920. Defendants admit that on any of the straight carload shipments consisting of the articles specified in the commodity item the commodity rate should have been applied, and that the commodity rate was applicable on carloads of turbines and parts thereof, water wheels, boilers, pumps (not hand pumps), and generators. Transformers come within the same category. They question whether the car of boilers and boiler tubes and the cars of water-wheel parts would be entitled to that rate, and it is not shown whether the two shipments of pumps were hand pumps. Defendants do not contend that the commodity rate, while applicable, for example, on boilers and turbines to be used for ironworking or

mining purposes, was not applicable on the same kind of boilers and turbines to be used in a paper mill. They apparently adopt the same construction of the words "Machinery and Machines, viz: machinery (electrical, ironworking (power), mining, smelting, not including oil well or well boring machines), consisting of the articles named below," which we applied in *Northwest Steel Co. v. Director General*, 68 I. C. C., 195, in considering this tariff item. It is apparent that charges on 12, and perhaps more, of the shipments were erroneously assessed; that the commodity rates to Camas, and these rates plus the arbitraries to West Linn, were applicable on at least the 12 shipments; and that the legal rates were applied on about 40 mixed carloads of special paper-mill machinery not covered by the commodity item. Defendants should promptly check the specific shipments with complainant and refund the outstanding overcharges, with interest.

When these commodity rates of \$1.56 and less were in effect the class A rates to Pacific coast terminals ranged from \$1.92 from Group A points to \$1.72 from Group E points. The latter rates were increased on June 25, 1918, and August 26, 1920, by the same percentages as the commodity rates. Prior to June 25, 1918, commodity rates of \$1.40 applied from Groups A to J, inclusive, to Yakima, Sunnyside, and Toppenish, Wash., on sugar-making machinery. Those rates were also increased on June 25, 1918, and August 26, 1920. Prior to March 15, 1918, there was in effect a general machinery commodity rate applicable on machinery classified Group A in western classification and applicable to the kinds of machinery shipped by complainant. On that date, for example, these rates from Group A points were 4 cents higher than the commodity rates on electrical, ironworking (power), mining, and smelting machinery. In *Transcontinental Rates*, 46 I. C. C., 236, we found the then existing water competition to be a negligible factor in affecting the rates by rail between Atlantic and Pacific coast terminals. In *Transcontinental Commodity Rates*, 48 I. C. C., 79, in passing on certain fifteenth section applications, we authorized the filing of increased rates. Under this authority the general machinery commodity rates were canceled. The commodity rates on electrical, ironworking (power), mining, smelting, and sugar-making machinery were continued. Hence this complaint.

Complainant contends that the machinery shipped by it did not differ materially from that upon which the lower commodity rates were maintained; that the originating territory was the same, and that the rates on the electrical, ironworking (power), mining, and smelting machinery applied to Camas and Image, Wash., and Fairview, Oreg., and to Portland, intermediate to Fairview. Image is

within 15 miles of Portland. Complainant asserts that the value and liability to damage is practically the same on all classes of machinery, that there is no difference from a transportation standpoint between the machinery shipped to it and that shipped to plants making products other than paper, and that the difference in the rates is due solely to the difference in the character of the products of the plant in which the machinery is installed. Complainant failed to describe in detail or even to enumerate the articles shipped in mixed carloads and billed as pulp or paper making machinery, and therefore failed to prove its contentions with respect to similarity of transportation conditions.

On behalf of defendants it is shown that originally the mining and smelting machinery commodity rates were made to assist and foster the mining industry at interior points and that the sugar-making machinery commodity rate was never applicable to points west of the Cascade Mountains, and was originally published to Yakima, because the soil in that region was adapted to the culture of sugar beets.

Complainant's witness testified that if the rates for the transportation of all classes of machinery and machines had been on a substantial equality and if the commodity rates on electrical, iron-working (power), mining, and smelting machinery had been canceled simultaneously with the cancellation of the general machinery commodity rate it would have had no complaint. It admits that there is no competition between the products of paper plants and those of mining, smelting, and sugar-making plants, although it contends that, since the increase of the general machinery rate to the class basis was due to the elimination of water competition equally affecting other machinery, it was unjust, unreasonable, and discriminatory to accord different treatment to the two classes of machinery. It asserts that although it may have been necessary to foster mining, smelting, and sugar-making originally, the record fails to show why such plants should be now favored. There is no evidence that the rates charged were or are unreasonable *per se*.

Water competition via the Panama Canal is said to be potent now as exemplified by an effective westbound carload commodity rate of \$2 applicable all rail on all machinery from defined territory to Pacific coast terminals.

Our finding with respect to the application of the commodity rates to straight carloads of certain kinds of machinery satisfies the complaint to that extent. In the absence of descriptions of, or specific evidence as to, the articles contained in the remaining shipments, we can not find, upon this record, that the rates on such shipments were unlawful. An order dismissing the complaint will be entered.

No. 12617.

CAPE GIRARDEAU PORTLAND CEMENT COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ST. LOUIS SOUTH-
WESTERN RAILWAY COMPANY, ET AL.

Submitted December 28, 1921. Decided May 2, 1922.

Charges applicable on a carload of cement from Cape Girardeau, Mo., to Fisher, Ark., reconsigned to Little Rock, Ark., found unreasonable. Reparation awarded.

Lee Bagby for complainant.

A. H. Kiskaddan for director general.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing portland cement at Cape Girardeau, Mo., alleges by complaint seasonably filed that the charges collected on a carload of cement shipped in November, 1919, from Cape Girardeau to Fisher, Ark., and there reconsigned to Little Rock, Ark., were unreasonable. The prayer is for reparation only. Rates will be stated in cents per 100 pounds.

The shipment, weighing 54,720 pounds, reached Fisher on November 19, 1919, and remained there several days unclaimed and under demurrage. On December 3, 1919, complainant directed reconsignment to Little Rock. Charges of \$369.64 were collected at the applicable commodity rate of 16 cents from Cape Girardeau to Fisher and the class C rate of 41.5 cents beyond, plus \$50 demurrage, the basis for which does not appear, and a reconsignment charge of \$5. Allowing two days' free time because of placement of the car for unloading at Fisher, and deducting two Sundays, the demurrage charges should have been assessed at \$2 per day for four days, and \$5 per day for six days, a total of \$38. The shipment was therefore overcharged \$12. The transportation charges were applied under a rule in the applicable tariff which provided that if a car had been placed for unloading at the original billed destination and was re-forwarded therefrom without being unloaded it would be subject to

the published rates to and from the point of reconsignment, plus a \$5 reconsignment charge.

The joint commodity rate of 16 cents was also contemporaneously applicable from point of origin to final destination, and complainant contends that the reconsignment should have been effected at this rate plus a \$5 reconsignment charge. As tending to show that a 16-cent rate would have been reasonable for the haul from Cape Girardeau to Little Rock, 292 miles, complainant compares it with a rate of 19 cents contemporaneously applicable from St. Louis, Mo., to Little Rock, 423 miles, and 16 cents from Cairo, Ill., to Little Rock, 316 miles.

The tariff naming the 16-cent rate from Cape Girardeau to Fisher and Little Rock provided, in accordance with rule 77 of our Tariff Circular 18-A, that upon reasonable request therefor rates would be established from intermediate points, not exceeding those from more distant points, on one day's notice. No request was made for the establishment of this rate from Fisher to Little Rock, and defendants state that the application of the class C rate was not unreasonable, considering that cement is not produced at Fisher; that the shipment was an isolated one; and that probably no other shipment of cement will ever originate at Fisher. The ton-mile revenue derived from the 41.5-cent rate from Fisher to Little Rock, 128.8 miles, is 64.4 mills; a rate of 16 cents would yield ton-mile earnings of 25 mills.

In several cases, where the combination of rates to and from the point of reconsignment was not unreasonable, we have approved tariff provisions governing reconsignment similar to those applicable here. *Silica Sand Producers Assn. v. C., B. & Q. R. R. Co.*, 63 I. C. C., 217. This record does not afford a basis for finding the reconsignment provision itself unlawful. We have found that demurrage charges assessed upon the basis of \$2 and \$5 per car per day were not unreasonable. *Lowry Lumber Co. v. Director General*, 59 I. C. C., 90.

We find that the combination rate of 57.5 cents charged was unreasonable to the extent that it exceeded 32 cents. We further find that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate of 32 cents, plus the reconsignment charge of \$5 and demurrage of \$38; and that it is entitled to reparation in the sum of \$151.54, with interest.

An appropriate order will be entered.

No. 12393.

LEE PENDERGRASS COTTON COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI PACIFIC
RAILROAD COMPANY, ET AL.

Submitted September 16, 1921. Decided May 8, 1922.

Rates on cotton from points in Arkansas to eastern mill points and the Gulf ports, concentrated and compressed at, and reshipped from, Helena, Ark., found not unreasonable over the routes of movement. Certain shipments found overcharged. Reparation awarded.

M. W. Martin for complainants.

Henry G. Herbel and *James M. Chaney* for Missouri Pacific Railroad Company.

John F. Finerty and *E. C. Blanchard* for director general, as agent.

Walter Shannon for Missouri & North Arkansas Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner. Our conclusions differ somewhat from those recommended by him.

Complainants are the Lee Pendergrass Cotton Company, a partnership, and the Interstate Grocer Company, a corporation, doing business as cotton factors and merchants at Helena, Ark. By complaint filed February 23, 1921, they allege that the rates charged for the transportation of cotton between September, 1917, and May, 1918, and again between September, 1919, and February, 1920, inclusive, from points in Arkansas to eastern mill points and other destinations, concentrated and compressed at, and reshipped from, Helena, were unjust and unreasonable. We are asked to award reparation. Rates will be stated in cents per 100 pounds. During Federal control the lines of carriers mentioned herein were operated by the Director General of Railroads, but for convenience the corporate names of those lines will be used.

The Interstate Grocer Company handled cotton entirely on consignment, charging a commission for its services in concentrating, grading, storing, compressing, and marketing. Its shipments consisted of uncompressed cotton which moved into Helena between September, 1917, and March, 1918, inclusive, over the Missouri Pacific and the Missouri & North Arkansas, was concentrated and compressed at Helena, and was reshipped over the Yazoo & Mississippi Valley to eastern mill points. The Lee Pendergrass Cotton Company handled cotton both on consignment and for their own account. Their shipments consisted of uncompressed cotton which moved into Helena between September, 1919, and February, 1920, inclusive, over the Missouri & North Arkansas, was concentrated and compressed at Helena, and reshipped over the Missouri Pacific and Yazoo & Mississippi Valley to Boston, Mass., rate points, Carolina points, New Orleans, La., and Galveston, Tex.

When the shipments moved, the Missouri Pacific, the Missouri & North Arkansas, and the director general maintained what are commonly known as transit rates on cotton, that is, joint through rates from points of origin in Arkansas to eastern destinations and the Gulf ports with provision for stoppage en route at certain points, including Helena and hereinafter called transit points, for the purpose of sorting, grading, concentrating, and compressing. The Missouri Pacific cotton tariff, concurred in by the Missouri & North Arkansas, contained three sections. Section 1 provided for the collection of a specified inbound rate, known as a billing rate, from the points of origin to Helena, on uncompressed cotton "to be concentrated and reshipped." Section 2 contained the basis for joint through rates on cotton concentrated, compressed, and reshipped, published in the form of arbitraries to be added to the rates from the transit points in computing through transit rates. These arbitraries were figured on the basis of the difference between the joint through rate from point of origin and the rate from the transit point, making allowance for back hauls. Section 3 contained local, joint, and proportional rates on cotton delivered to the carrier uncompressed to go through to destination uncompressed; on cotton delivered to the carrier uncompressed and to be compressed at the expense of the carrier, or at the expense of the owner; and rates on compressed cotton. Joint through rates from points in Arkansas to eastern destinations and the Gulf ports were published in this section.

More than 90 per cent of the cotton handled under this tariff moves to transit points and is concentrated, compressed, and reshipped to eastern mill points, or to the Gulf ports for export, under the transit rates. The inbound billing rate is collected when the shipments move to the transit point and the outbound rate from

the transit point is collected when the shipments move to final destination. A claim is then presented, in accordance with the provisions of the tariff, supported by the inbound freight bills and copies of the bills of lading covering the shipments from the transit point, for the difference between the amount paid and the joint through transit rate from point of origin to final destination. The local rates on cotton are seldom used.

The Yazoo & Mississippi Valley also publishes a tariff containing transit rates from points on the Missouri & North Arkansas on cotton concentrated and compressed at Helena and reshipped to eastern destinations and the Gulf ports, including the destinations here considered. This tariff provides that the inbound freight bills must be surrendered to the agent of the Missouri & North Arkansas at the transit point when the cotton is forwarded, and authorizes the application of the balance of the joint through rate from original point of shipment to final destination.

Inbound charges on all shipments moved into Helena over the Missouri Pacific were collected at the billing rates published in section 1 of its tariff. These rates were graduated at intervals of 5 cents and from these shipping points to Helena were from 2 to 6 cents higher than the local rates. The inbound bills of lading were not introduced in evidence and there is nothing to show whether they contained notations to indicate that the cotton was intended for destinations beyond Helena. There is no specific provision of the Missouri Pacific tariff which clearly requires such notation. The billing rates are customarily applied to any uncompressed cotton moving to a transit point. Inbound charges on all shipments moved into Helena over the Missouri & North Arkansas were collected at Arkansas intrastate distance rates, which were from 5 to 14 cents higher than the inbound billing rates carried in the Missouri Pacific, Yazoo & Mississippi Valley, and Chicago, Rock Island & Pacific tariffs to which the Missouri & North Arkansas was a party. The Arkansas distance rates are attacked as unreasonable *per se*. These intrastate rates were not applicable on cotton to Helena for concentration, compression, and reshipment to interstate destinations, and these shipments were, therefore, overcharged.

Complainants presented claims to the Missouri Pacific, the Missouri & North Arkansas, and the director general for the difference between the charges paid and the joint through transit rates from points of origin to final destination, but these were rejected upon the ground that the inbound and outbound movements were not over the lines of the same carriers. Complainants contend: First, that the tariff applicable to these shipments did not require that claims for readjustment of charges to the basis of the joint through

transit rates must be supported by outbound bills of lading issued by the carrier over whose rails the cotton had moved into the transit point; second, that on account of embargoes and car shortage the outbound shipments were not accepted for movement over the rails of the carriers which had the inbound movement, and furthermore that during the period of Federal control all lines, both inbound and outbound, were being operated as a unified system, by reason of which the forwarding of the cotton over any line was the same as forwarding it over the particular line which had the inbound movement into Helena; and third, that the rates charged were unreasonable. These contentions will be discussed in the order stated.

The Missouri Pacific tariff, the application of which is sought, provided as follows:

When an equal or greater amount of Compressed Cotton or Cotton Linters are reshipped *over this line* under rates applying on Cotton or Cotton Linters delivered at destination compressed, but which were delivered to carrier at points of origin in uncompressed bales and compressed by and at the expense of the carrier, provided [in this tariff and others enumerated], charges will be readjusted in accordance with paragraphs * * * to the basis on * * * of Section No. 2, and rates from compress points in Section No. 3, provided rules and regulations named in Section No. 2 of this tariff are observed in all respects. [Italics ours.]

Section 2 of the tariff contains the arbitraries to be added to the transit point rate in computing the joint through transit rate. The question arises: What is meant by the phrase "over this line"? Rates are published in this tariff from points on the Missouri & North Arkansas and that line is a party to the tariff by a blanket concurrence. Claims for adjustment of charges are required to be supported by (1) freight bills covering shipment into transit point dated prior to outbound shipments, (2) signed copies of bills of lading covering shipment from transit point subsequent to inbound expense bills, and (3) reshipping certificate in a certain form (this is merely a statement by the shipper that the tender is made in good faith). The tariff does not specifically require that the bills of lading covering shipments from the transit point shall be issued by the carrier bringing the cotton into the transit point. The Yazoo & Mississippi Valley participates in this tariff as an intermediate or delivering line only. The routing from Helena under the transit rates is restricted to the Missouri Pacific, to New England destinations via East St. Louis, Ill., and to South Atlantic and Carolina points via Memphis.

It is admitted that the practice was to forward cotton from the transit point over the line of the carrier which had the inbound movement. For example, if the cotton had moved into Helena over the Missouri & North Arkansas it would ordinarily have been

tendered to that carrier for reshipment, even though the Missouri & North Arkansas performed only a switching service and immediately turned it over to a connecting carrier.

Complainants testified that they were compelled to rely upon the buyers of the cotton to deliver it to the proper carrier and to furnish them with outbound bills of lading issued by the carrier over whose rails the cotton had moved into Helena. In some instances the outbound shipments from Helena were tendered to the carriers by the complainants themselves. Various reasons were given by the carriers' agents for not accepting the cotton. Sometimes the reason given was that an embargo was in effect; sometimes that they had no cars; and sometimes simply that the agents could not handle the shipments. Complainants could not say that every shipment was tendered to the carrier over whose rails the cotton had moved into Helena, or specify the shipments which were so tendered. Numerous embargoes on cotton were in effect during 1917, 1918, and 1919, over the Missouri Pacific, and their lawfulness is not questioned. That a car shortage existed during this period was also admitted.

Defendants contend that the consideration for the establishment of the inbound rates on so low a basis is that the carrier bringing the cotton in will also receive at least a part of the outbound haul. But this does not aid in the construction of the tariff. It is clear that the interpretation previously placed on these tariff provisions by the carriers and shippers was that for which defendants now contend.

We are of opinion that the phrase "over this line" has reference to the rails of the Missouri Pacific. On shipments which moved into Helena between September, 1919, and February, 1920, inclusive, over the Missouri & North Arkansas and outbound over the Missouri Pacific, the transit rates were applicable and should have been applied. These shipments have been overcharged.

Complainants contend that during the period of Federal control the line of the Yazoo & Mississippi Valley was the same as the line of the Missouri Pacific for purposes of the application of the Missouri Pacific tariff, above referred to. With this contention we do not agree. The lines were still distinguished by their corporate names.

If the transit rates were not applicable over the route of movement, then it is complainants' contention that, during the period of Federal control, the rates charged were unreasonable to the extent that they exceeded the transit rates. In support thereof they cite General Order No. 1 of the director general, which authorized the carriers, in certain instances, to disregard routes designated by the shippers and to establish certain through routes which had not there-

tofore existed where speed and efficiency of transportation would be thus promoted. Our order of April 26, 1918, in the matter of routing shipments under General Order No. 1 authorized the adjustment of charges to the basis of those applicable over the routes designated by the shipper, or of those applicable over the route by which the shipments would ordinarily have been sent. These orders have no application to shipments delivered by shippers to a line not included in the routes provided for in the tariffs. Complainants urge that if the carriers were permitted to disregard existing rate schedules and establish through routes to promote speed and efficiency of transportation, it would have been just and reasonable to allow the shipper, when a route over which a transit arrangement applied was embargoed, to forward the shipment over another route not embargoed, and to allow the adjustment of the charges on the basis of the transit rate. The carriers' agents were not authorized to divert shipments over routes not provided for in the tariffs, when the route ordinarily used was embargoed. Aside from the contention that the manner in which these shipments were handled by complainants should have been disregarded, there is no evidence to show that the through rates were unreasonable over the routes of movement.

We find that the applicable rates were not unjust or unreasonable. We further find that certain of the shipments were overcharged, as indicated in the report; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged thereby in the amounts of the overcharges; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice.

68 I. C. C.

No. 12778.

SALEM GLASS WORKS ET AL.

v.

DIRECTOR GENERAL, AS AGENT, MICHIGAN CENTRAL
RAILROAD COMPANY, ET AL.

Submitted January 6, 1922. Decided May 2, 1922.

Rate on soda ash, in carloads, from Detroit and Wyandotte, Mich., to Salem and Millville, N. J., found not unreasonable or otherwise unlawful. Complaint dismissed.

Stilwell B. Smith for complainants.

Alex. M. Bull for Director General of Railroads, as agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants allege that the rate charged on 29 carloads of soda ash shipped between May 21 and October 13, 1919, from Detroit and Wyandotte, Mich., to Salem and Millville, N. J., was unreasonable, unduly prejudicial, and illegal. We are asked to award reparation. Rates and arbitraries will be stated in cents per 100 pounds.

Salem and Millville are on the West Jersey & Seashore, 38 and 41 miles, respectively, from Philadelphia, Pa. Wyandotte is about 10 miles southwest of Detroit. The shipments moved over the Michigan Central to Black Rock, N. Y., and the Pennsylvania and West Jersey & Seashore beyond. Charges were assessed at the applicable rate of 29.5 cents, a 6.5-cent arbitrary over the joint commodity rate of 23 cents to Philadelphia.

For many years prior to June 25, 1918, rates on this traffic were constructed on the basis of a 5-cent arbitrary over the Philadelphia rate. Complainants contend that the increased arbitrary of 6.5 cents, effective on that date, was illegal because it was published in a supplement to a loose-leaf tariff which provided in accordance with Tariff Circular No. 18-A that no supplement would be issued except to cancel the tariff. In connection with increases provided under General Order No. 28 of the Director General of Railroads, we temporarily waived, among others, the rule requiring all

changes in and additions to tariffs issued in loose-leaf form to be made by reprinting both pages of the leaf upon which change is made.

On May 20, 1919, the 6.5-cent arbitrary over the Philadelphia rate was reduced to 5 cents on traffic via Pittsburgh, Pa. Likewise, on December 31, 1919, on traffic moving over routes which included the Baltimore & Ohio as an intermediate carrier, the 5-cent arbitrary was restored. The 6.5-cent arbitrary was maintained during Federal control over the route of movement and certain other routes. The reduction in the arbitrary by some routes and not by others was due to misinterpretation of instructions issued by the railroad administration. When attention was called thereto the increased arbitrary was reestablished via Pittsburgh on October 24, 1919, and it would have been reestablished over routes embracing the Baltimore & Ohio had not the period of Federal control terminated shortly after the reduction was made in connection with that line.

Complainants' allegation of unreasonableness is based upon the existence, during the period of movement, of the lower rate via Pittsburgh, and its subsequent establishment over routes which included the Baltimore & Ohio as an intermediate carrier. A rate over a particular route is not presumed to be unreasonable merely because a lower rate applies over other routes. The record contains no evidence of undue prejudice.

Rates on soda ash from and to points between which this commodity moves, including rates from Detroit and Wyandotte to Memphis, Tenn., and from Solvay, N. Y., to points in Maine, compare favorably for similar distances with the rate charged.

We find that the rate assailed was not unreasonable or otherwise unlawful. The complaint will be dismissed.

68 I. C. C.

No. 12205.

PIONEER COOPERAGE COMPANY ET AL.

v.

BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted August 1, 1921. Decided May 8, 1922.

Rates on new empty slack and tight wooden barrels and kegs, in carloads, from St. Louis, Mo., to Evansville, Ind., Louisville, Ky., and Cincinnati, Ohio, found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

Wm. E. Rosenbaum for complainants.

H. L. Walker for Southern Railway Company, *William Burger* for Louisville & Nashville Railroad Company, *S. C. Matthews* for Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company, *Edward Hart* for Baltimore & Ohio Railroad Company, and *R. D. Hunter* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

H. M. Welker and *John S. Burchmore* for J. D. Hollingshead Company, interveners.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

Complainants are the Pioneer Cooperage Company and the Schaperkötter Cooperage Company, corporations manufacturing wooden barrels and kegs. The former has plants at St. Louis, Mo., and Chicago, Ill., and manufactures tight cooperage. The latter has a plant at St. Louis and manufactures slack cooperage. By complaint filed February 5, 1921, they allege that the rates on wooden barrels and kegs, in carloads, from St. Louis to Evansville, Ind., Louisville, Ky., and Cincinnati, Ohio, are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in comparison with rates on those commodities, and on like traffic from Memphis, Tenn., to the same destinations, and between other points for comparable distances. The prayer is for just and reasonable rates for the future. Rates will be stated in cents per 100 pounds.

The J. D. Hollingshead Company, organized under a so-called Massachusetts trust agreement and manufacturing slack cooperage at St. Joseph, Mo., Thebes, Ill., and Louisville, intervened at the hearing. It desires preservation of the present relationship of rates on slack cooperage from St. Louis, on the one hand, and Thebes and Louisville, on the other, to the crossings mentioned and territory tributary thereto, and shows that in those markets it comes into keen competition with St. Louis producers, including complainant Schaperkötter Cooperage Company.

Empty wooden barrels and kegs are light articles and generally move on class rates. The carload ratings in official, southern, and western classifications are third class on slack and fourth class on tight, minimum 10,000 and 12,000 pounds, respectively, subject to the graduated minima provided by rule 34 of the consolidated classification. Complainants show these ratings and minimum weights as applying in connection with the rates from St. Louis which, with the short-line distances, are as follows: To Evansville, 165 miles, slack 49.5 cents, tight 37 cents; Louisville, 274 miles, slack 58.5 cents, tight 44 cents; and Cincinnati, 339 miles, slack 61.5 cents, and tight 46 cents. The same rates apply in the opposite direction. Commodity rates apply from Memphis and are the same on both slack and tight. Following *Rates to, from, and between Points South of Ohio River*, 64 I. C. C., 306, the rates from Memphis to Evansville and Louisville, 28 and 31.5 cents, minimum 15,000 pounds, have been increased to 52 cents, minimum 12,000 pounds; and the rate to Cincinnati, 39.5 cents, minimum 15,000 pounds, has been increased to 58 cents, minimum 12,000 pounds. The short-line distance from Memphis to Evansville is 312 miles; to Louisville, 377 miles; and to Cincinnati 487 miles. In the opposite direction class rates apply. These rates are: From Evansville, 91 cents on slack and 78 cents on tight; Louisville, 94 cents on slack and 81 cents on tight; and Cincinnati, 105 cents on slack and 90 cents on tight.

Complainants contrast the rates assailed with lower rates on the same commodities, principally from St. Louis, Leslie, Ark., and Shreveport, La., to various western destinations to which the distances are substantially the same under operating conditions, said to be more difficult. The commodity rate on both slack and tight cooperage, for example, from St. Louis to Kansas City, Mo., and Omaha, Nebr., 277 and 413 miles, respectively, is 23 cents, minimum 14,000 pounds; from Leslie to Helena, Ark., 179 miles, 17 cents, minimum 20,000 pounds; to Cairo, Ill., 301 miles, 37 cents, minimum 20,000 pounds; and to Kansas City, 344 miles, 40.5 cents, minimum 14,000 pounds; and from Shreveport to Dallas, Tex., 190 miles, 25.5 cents, minimum 10,000 pounds on slack and 11,200 pounds on tight.

Comparisons are also made with commodity rates of 14 cents on straw, minimum 20,000 pounds, from East St. Louis, Ill., to Evansville, 190 miles; 33 cents, minimum 14,000 pounds, on paper cans from St. Louis to Chicago, 284 miles; 50 cents, minimum 14,000 pounds, on tin cans, from Peoria, Ill., to Springfield, Mo., 412 miles; and 25.25 cents, one-half of third class, minimum 10,000 pounds, on empty returned tomato baskets and crates, from Sims, Ill., to Louisville, 169 miles.

Defendants point out that the rates from St. Louis to Evansville are the same as, and to Louisville and Cincinnati slightly lower than, the scale prescribed by us in the *C. F. A. Class Scale case*, 45 I. C. C., 254, as subsequently increased, for corresponding distances. Tight cooperage moves from St. Louis to points in Indiana, Missouri, and the southeast for comparable distances on rates which are the same as or higher than those attacked. The earnings per car are lower on barrels and kegs than on a great variety of heavier loading traffic moving from St. Louis to Evansville, Louisville, and Cincinnati under commodity rates.

Louisville is one of the largest barrel-manufacturing cities in the country. Its distributing territory is north, south, and east. The output of the barrel factories at Evansville now approximately meets local requirements. Barrels are also manufactured in Cincinnati. Complainants' disadvantage in those markets is due to their geographical location rather than to the freight rates.

Memphis is the only point alleged to be unduly preferred, but complainants introduced no evidence with respect to competition from that point, and defendants show that for the past six years there have been no new barrels or kegs shipped from Memphis to Evansville, Louisville, or Cincinnati.

We find that the rates assailed are not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

68 I. C. C.

No. 12265.

EMPIRE REFINERIES, INCORPORATED, ET AL.

v.

DIRECTOR GENERAL, AS AGENT, TEXAS & PACIFIC
RAILWAY COMPANY, ET AL.

Submitted November 12, 1921. Decided May 8, 1922.

Rates on crude petroleum, in tank-car loads, from Homer, La., to Independence, Kans., and from points in the Ranger and Shreveport groups to points in Oklahoma Group 3 and Kansas Group 2, found unreasonable. Reparation awarded.

A. C. Holmes and Warren T. Spies for complainants.

H. L. McCracken for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner. Our conclusions differ somewhat from those recommended by him.

Complainants, the Empire Refineries, Incorporated, and the Standard Asphalt & Refining Company, are corporations engaged in the manufacture and sale of petroleum products, with their principal offices at Tulsa, Okla. By complaint filed February 14, 1921, as amended, they allege that the rates charged by defendants on a number of tank-car loads of crude petroleum shipped between August 31, 1918, and November 21, 1919, inclusive, from certain points in Texas and Louisiana to Okmulgee, Okla., and Independence, Kans., were illegal and unreasonable. The prayer is for reparation only. Rates will be stated in cents per 100 pounds.

Defendants contend that the claim on certain of the shipments is barred by the statute of limitations. All shipments moved over lines then under Federal control. The contention is untenable.

The following table shows various details respecting the shipments:

68 I. C. C.

Haul.	Routing.	Distance.	Carloads.	Rate charged	Applicable rate.	Rate subsequently established.
		<i>Miles.</i>		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
To Okmulgee from—						
Lewis, La.....	K. C. S. to Westville, Okla.; Frisco beyond.	400	5	24.5	24.5	23
Lewis, La.....	K. C. S. to Ashdown, Ark.; Frisco beyond.	364	2	24.5	24.5	23
Brownwood, Tex...	Ft. W. & R. G. and Frisco.....	406	5	27.5	27.5	23
Brownwood, Tex...	G. C. & S. F., Frisco, and Mo. Pac...	665	2	94	87.5	23
Ranger, Tex.....	T. & P., Frisco, and Mo. Pac.....	503	2	94	87.5	23
Oil City, La.....	K. C. S. to Pittsburg, Kans., and Mo. Pac.	491	2	38	79	23
To Independence from—						
Homer, La.....	L. & N. W. and V. S. & P. to Shreveport, La.; K. C. S. to Texarkana, Ark.; and Mo. Pac. beyond.	625	3	73.8	54.5	26
Lewis, La.....	K. C. S. to Sallisaw, Okla., and Mo. Pac.	397	5	24.5	47	23
Lewis, La.....	K. C. S., Frisco, and Santa Fe.....	537	5	39	34.5	23

The rates applicable on the shipments were, to Okmulgee, joint commodity rates; to Independence from Brownwood, Ranger, and Oil City, joint fifth-class rates; and to Independence from the other points shown, combination rates. The shipments from Lewis to Independence which moved in part over the Santa Fe were originally billed to Okmulgee, but before placement at that point were re-consigned to Independence. The combination rate applicable was made by adding 4.5 cents to the aggregate of the factors to and beyond Okmulgee, 20 and 10 cents, respectively, in effect June 24, 1918. The combination from Lewis to Independence over the other route, which included the Missouri Pacific, was made by adding 4.5 cents to the aggregate of the factors to and beyond Coffeyville, Kans., 33.5 and 9 cents, respectively, in effect June 24, 1918. The combination from Homer to Independence was composed of commodity rates of 12.5 cents to Shreveport, La., 27.5 cents thence to Van Buren, Ark., and 14.5 cents beyond. Complainants are in error in their contention that a commodity rate of 24.5 cents, which applied from Oil City and Lewis to Kansas City, Mo., also applied to Independence. That rate was published subject to rule 77 of Tariff Circular 18-A, but it was restricted in its application to the direct line of the Kansas City Southern, and over that line Independence is not an intermediate point. Both overcharges and undercharges are outstanding.

Prior to the movement complainants requested the establishment of commodity rates on crude petroleum from and to these points, but the exact basis of the rates thus sought is not disclosed. The subsequently established rates from Brownwood to Okmulgee and from Brownwood and Ranger to Independence became effective October 14, 1919, the others December 31, 1919. They were made applicable over the respective routes of movement and form the basis of complainants' claim for reparation.

In *Western Petroleum Refiners Asso. v. Director General*, 66 I. C. C., 426, we found that reasonable rates on crude petroleum oil, in tank-car loads, from the Ranger group, which includes Ranger and Brownwood, to Oklahoma Group 3, which includes Okmulgee, and to Kansas Group 2, which includes Independence, would not exceed 21.5 and 24.5 cents, respectively, plus the general increases of 1920. No finding was made with respect to the rates from the Shreveport group, which includes Lewis and Oil City, to either of these destination groups, and the territory of origin, which embraces Homer, was not considered. Rates from these Louisiana points which will harmonize with the rates approved in the case cited can not be determined upon this record.

Following the case cited, and upon the present record, we find that the applicable rates from Brownwood to Okmulgee, and from Brownwood and Ranger to Independence, were unreasonable to the extent that they exceeded 21.5 and 24.5 cents per 100 pounds, respectively; that the applicable rate from Homer was unreasonable to the extent that it exceeded the subsequently established rate of 26 cents per 100 pounds; and that the applicable rates from and to the other points considered were unreasonable to the extent that they exceeded the subsequently established rate of 23 cents per 100 pounds. We further find that the respective complainants made the shipments as described and paid and bore the charges thereon; that they were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable, less applicable reconsignment charges on the shipments from Lewis to Independence, diverted en route; and that they are entitled to reparation, with interest. Complainants should comply with Rule V of the Rules of Practice. In view of this finding, collection of the outstanding undercharges should be waived.

68 I. C. C.

No. 12359.
HUMBLE PIPE LINE COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted December 10, 1921. Decided May 8, 1922.

Rate on wrought-iron pipe, in carloads, from Pittsburgh, Pa., to Hillendahl, Bellaire, and Fairbanks, Tex., found not unreasonable or otherwise unlawful. Complaint dismissed.

C. H. McNair for complainant.
Alex M. Bull for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By Division 3:

No exceptions were filed to the report proposed by the examiner. Complainant, a corporation transporting crude oil by pipe lines, with offices at Houston, Tex., alleges that the rate charged on 27 carloads of wrought-iron pipe, shipped during July, 1919, from Pittsburgh, Pa., to Hillendahl, Bellaire, and Fairbanks, Tex., was unreasonable and in violation of the fourth section of the interstate commerce act in that it exceeded the aggregate of the rates contemporaneously in effect to and beyond Houston, Tex. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

Hillendahl, Bellaire, and Fairbanks, Texas common points, are, respectively, 11, 7.2, and 12.2 miles west of Houston, on the Missouri, Kansas & Texas of Texas, the San Antonio & Aransas Pass, and the Houston & Texas Central. The routes specified by the shipper and those over which the shipments moved follow:

From Pittsburgh to—	Number of carloads.	Shipper's routing.	Routes of movement.
Hillendahl..	7	C., I. & W.; C., P. & St. L.; M., K. & T.	B. & O.; C. I. & W.; C., P. & St. L. to East St. Louis, Ill.; M., K. & T.
Bellaire.....	12	T., St. L. & W.; St. L. S. W.; S. A. & A. P.	B. & O.; T., St. L. & W. to St. Louis, Mo.; St. L. S. W. to Waco, Tex.; S. A. & A. P.
Fairbanks..	5	L. E. & W.; C., P. & St. L.; St. L. S. W.; H. & T. C.	B. & O.; L. E. & W.; C. P. & St. L. to East St. Louis, Ill.; St. L. S. W. to Corsicana, Tex.; H. & T. C.
Do.....	2	.....do.....	B. & O.; L. E. & W.; I. C. to East St. Louis, Ill.; St. L. S. W. to Corsicana, Tex.; H. & T. C.
Do.....	1	.....do.....	B. & O.; L. E. & W.; C., B. & Q. to Kansas City, Mo.; M., K. & T. to Denison, Tex.; H. & T. C.

Charges were collected at the joint commodity rate of 74 cents applicable from Pittsburgh to Texas common points, made differentially 24 cents over the basic rate of 50 cents from St. Louis. Contemporaneously a rate of 58.5 cents applied from Pittsburgh to Houston, the rate to that point from St. Louis being 34.5 cents. The interstate fifth-class rates applicable on this commodity from Houston to Hillendahl, Bellaire, and Fairbanks, were 14, 12.5, and 14 cents, respectively.

The joint rates described were not restricted so as to conform to the provisions of the fourth section of the act. Over certain open routes by which Houston is intermediate to these destinations the rate assailed exceeded the aggregates of the commodity rate to that point and the fifth-class rates beyond. Over the routes of movement it exceeded the rate for the longer haul to Houston. These departures from the fourth section were protected by appropriate applications, those covering the aggregate-of-the-intermediates provisions having been heard in a separate proceeding not yet decided.

Complainant's contention that the 74-cent rate was unreasonable is based solely on the fact that it exceeded the sum of the separately established rates to and beyond Houston. But Houston is not intermediate to any destinations here considered over any of the routes of movement or by any of the routes designated by the shipper. We have repeatedly found that no presumption of unreasonableness attaches to a joint rate applicable over a particular route because the aggregate of the intermediate rates over another route would make a lower charge. *Kinnear Mfg. Co. v. P., C., C. & St. L. Ry. Co.*, 45 I. C. C., 74. It was testified for defendant that the rate to Houston was compelled by water competition.

One of the shipments to Hillendahl was carried through that point into the Houston yards and back again to its destination. That mere accident of transportation did not have the effect, as complainant contends, of making Houston an intermediate point within the meaning of the fourth section as to that shipment.

We find that the rate assailed was not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 12379.

A. H. KERR & COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, SAND SPRINGS
RAILWAY COMPANY, ET AL.

Submitted November 21, 1921. Decided May 8, 1922.

Rates on soda ash, in carloads, from Hutchinson, Kans., to Sand Springs, Okla.,
found not unreasonable or unduly prejudicial. Complaint dismissed.

W. O. Allen for complainants.

H. L. McCracken, J. M. Chaney, T. J. Norton, and F. E. Andrews
for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by
the examiner.

Complainants are a corporation, copartners, and an individual
manufacturing glass articles at Sand Springs, Okla. By complaint
filed February 21, 1921, they allege that the rates charged on soda
ash, in carloads, shipped on and after January 1, 1917, from Hutch-
inson, Kans., to Sand Springs were unreasonable and unduly preju-
dicial. We are asked to award reparation and to prescribe a just
and reasonable rate for the future. The Schram Glass Manufactur-
ing Company of St. Louis, Mo., intervened but was not represented
at the hearing. Rates will be stated in cents per 100 pounds.

Hutchinson is served by the Atchison, Topeka & Santa Fe, the
Chicago, Rock Island & Pacific, and the Missouri Pacific, all of which
participate in this traffic. Sand Springs is on the Missouri, Kansas
& Texas and the Sand Springs, the latter an electric line operating
between that point and Tulsa, Okla., 7.2 miles. The shipments
approximated 275 carloads, moved in bulk in box cars, and were
delivered by the Sand Springs.

About 3,000 tons of soda ash move annually from Hutchinson to
Sand Springs. It is a low-grade commodity closely resembling com-
mon salt, from which it is made, and is used in large quantities by
glass manufacturers and at packing houses. It loads heavily and

claims for loss and damage are negligible. It is rated fifth class in western classification.

For several years prior to June 25, 1918, a commodity rate of 16 cents was maintained from Hutchinson to Sand Springs. On that date it was increased to 20 cents pursuant to General Order No. 28 of the Director General of Railroads and, effective August 26, 1920, it was further increased to 27 cents. Complainants seek reparation to the basis of rates of 12, 15, and 20.5 cents, respectively. No objection is made to the establishment of a carload minimum of 60,000 or 66,000 pounds instead of 50,000 pounds, as now provided.

From Hutchinson to Sand Springs the distances are 218 miles over the short route of the Missouri Pacific, Midland Valley, and Sand Springs, and 278 miles over the Santa Fe and the Sand Springs. Rates of 27 cents also apply from Hutchinson to Sapulpa, Okmulgee, and Poteau, Okla., and Fort Smith, Ark., for joint hauls of 264, 296, 438, and 369 miles, respectively. To Blackwell, Okla., for a single-line haul over the Santa Fe of 128 miles the rate is 17 cents. In the marketing of their products complainants meet the competition of glass manufacturers located at each of these points.

Complainants compare the rate assailed with rates on like traffic for comparable or greater distances in western territory. The following comparisons are illustrative:

Haul.	Distance.	Minimum weight.	Rate.	Revenue per ton-mile.
	<i>Miles.</i>	<i>Pounds.</i>	<i>Cents.</i>	<i>Cents.</i>
.....	¹ 243	50,000	27	2.13
.....	219	60,000	² 17	1.83
.....	233	60,000	17	1.42
.....	263	60,000	17	1.16
.....	266	40,000	23.5	1.77
.....	476	40,000	29	1.22
.....	279	50,000	20.5	1.47
.....	402	50,000	25.5	1.27
.....	417	50,000	29	1.39
.....	470	50,000	29	1.23
.....	556	50,000	29	1.04
to Fort Smith, Ark.....	327	50,000	17	1.04

¹ Average distance.

² When minimum of 40,000 pounds is used, the rate is 20.5 cents.

It is testified that there is a movement of soda ash, in carloads, under each of the rates referred to. The rates from St. Louis, and from Hutchinson to points north and east thereof, with which comparison is made, are said to apply under conditions so different from those affecting traffic to Sand Springs that they can not properly be compared with the rates to the latter point.

The percentage relationship of a number of commodity rates on soda ash in western territory to the corresponding fifth-class rates is developed by complainants, who show that these commodity rates

range from 23.9 to 41.8 per cent, and average 31.9 per cent, of the fifth-class rates. The rate assailed is 44.3 per cent of fifth class. *Oklahoma Traffic Asso. v. A., T. & S. F. Ry. Co.*, 38 I. C. C., 392, in which we prescribed a reasonable maximum rate of 21 cents on soda ash, in carloads, from St. Louis to Oklahoma City, Okla., is cited. This rate was equivalent to 33½ per cent of the contemporaneous fifth-class rate. The same percentage of the fifth-class rate from Hutchinson to Sand Springs would be 20.5 cents, which is the rate asked for the future. Particular attention is directed to the fact that while the class rates are the same from Hutchinson to Kansas City and Sand Springs, the commodity rate is 10 cents less to Kansas City. Concerning the significance of such comparisons, we said, in *Decker & Sons v. C., M. & St. P. Ry. Co.*, 30 I. C. C., 547, 551:

So many elements enter into the determination of a commodity rate that it can not be said that a commodity rate must always bear a fixed relation to the corresponding class rate, even as between competing points.

In the *Oklahoma Traffic Association case*, *supra*, decided March 4, 1916, we found 17 cents to be the reasonable maximum rate on soda ash, in carloads, from Hutchinson to Oklahoma City, 231 miles. At the time of the hearing that rate was 29 cents and yielded 2.51 cents per ton-mile. Defendants point out that we have prescribed for a single-line haul from Hutchinson to Oklahoma City a rate which, as since increased, is higher than the contemporaneous rate for two-line and three-line hauls to Sand Springs. Manifestly, the conditions affecting transportation to Sand Springs are less favorable. In the *Oklahoma Traffic Association case*, *supra*, after stating that Oklahoma City is reached by the main lines of four railway systems, we said, at page 394:

The tonnage over the lines named is dense in the vicinity of Oklahoma City, and we have repeatedly stated that Oklahoma City is exceedingly favorably located from a transportation standpoint.

The ton-mile earnings under the 29-cent rate to Oklahoma City if applied to the short-line distance to Sand Springs would make a rate to the latter point higher than that now in effect.

We find that the rates assailed were not and are not unreasonable or unduly prejudicial. The complaint will be dismissed.

68 I. C. C.

No. 12514.

FRANK G. DAY, DOING BUSINESS AS FRANK G. DAY &
COMPANY,

v.

DIRECTOR GENERAL, AS AGENT, MOBILE & OHIO
RAILROAD COMPANY, ET AL.

Submitted November 9, 1921. Decided May 8, 1922.

Rate applicable on knocked-down poultry coops, in carloads, from Dyer, Tenn., to Cincinnati, Ohio, found not unreasonable. Refund of overcharge directed. Complaint dismissed.

F. M. Renshaw for complainant.

A. P. Humburg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a distributor of poultry coops and egg cases at Cincinnati, Ohio, by complaint filed February 28, 1921, alleges that the rates collected on four carloads of "crate material" shipped from Dyer, Tenn., to Cincinnati, between February 28 and July 27, 1920, were illegal and unreasonable. Reparation and the establishment of a reasonable rate for the future are sought, but the evidence relates solely to the question of tariff interpretation. Rates are stated in cents per 100 pounds.

The shipments moved over the Mobile & Ohio and Louisville & Nashville. On one, which moved via Rives, Tenn., charges were collected at a combination rate of 51.5 cents, composed of the class N rate of 6.5 cents to Rives and the fifth-class rate of 45 cents beyond. On the others, which moved via Humboldt, Tenn., a combination rate of 54 cents, composed of the class N rate to the latter point and the fifth-class rate of 49 cents beyond, was assessed. The 51.5-cent rate was applicable on the latter shipments under authority of rule 5-b of our Tariff Circular 18-A.

Southern classification No. 44, I. C. C. No. 3, in effect when the shipments moved, provides a rating of fifth class on "coops or crates, animal or poultry, shipping, new, wood or metal, or wooden and metal combined, knocked down, flat or folded flat, loose or in bundles," carload minimum 20,000 pounds. By exceptions to the classification the Mobile & Ohio provided a rating of class N on "coops or crates, poultry, wooden, knocked down, flat, in bundles, straight or mixed carloads, minimum 30,000 pounds." Item 118, page 43 of Agent F. L. Speiden's tariff 1, I. C. C. No. 193, showed "box or crate material, wood, wired, loose or in bundles" as taking lumber rates from Dyer, Tenn., to Ohio River crossings, subject to a carload minimum of 30,000 pounds. Complainant contends that the commodity shipped was covered by the description last quoted, and that commodity rates were applicable thereon. Defendants take the position that the commodity shipped was knocked-down poultry coops and that the applicable rates were assessed. On our informal docket the general freight agent of the Mobile & Ohio expressed the view that the shipments came within the description last quoted and were entitled to the lumber rates. The general freight agent of the Louisville & Nashville asserted that the commodity was a poultry coop, knocked down. Samples of the commodity were submitted to the manager of the Southern Inspection and Demurrage Bureau, who reached the conclusion that the lumber rates were applicable. On shipments not here in issue, which moved over the Mobile & Ohio through Cairo, Ill., the lumber rate was collected.

The article is shipped in bundles or bales of two sizes, the larger about 49 inches long and 26 inches wide and the smaller 36 inches long and 13 inches wide. The larger bundles contain 10 tops and bottoms and the smaller bundles 10 sides, one bundle of each containing the material necessary to make five complete crates. The bundles are wrapped with wire, and 400 of each size, or sufficient material to make 2,000 crates, constitute an average carload. The sides consist of four wooden strips 26 inches long held in place by three 13-inch strips. The tops and bottoms consist of several pieces of light wood about 26 inches long, with spaces between, cleated, and held in place by four narrower strips of wood about 49 inches long. On the outside strips of the top and bottom sections a wire is tacked down every few inches and protrudes about 3 inches beyond the ends. A section of the top bends down forming one end of the crate, and a section of the bottom turns up forming the other end, and the protruding wires are twisted together to hold the parts in place. A few nails only are necessary to complete the crate. The dimensions

of the finished crate are 13 by 26 by 36 inches and the weight is approximately 15 pounds.

A witness for complainant admitted that the article was a "coop, knocked down," and an exhibit indicates that it was so advertised for sale. The tops, bottoms, and sides were doubtless made of crate material, but this material had been nailed, cleated, or wired into shapes making it necessary only to twist together four wires and add a few nails to produce a complete set-up crate. The article shipped was not crate material as described in the commodity tariff but was clearly a knocked-down poultry crate or coop.

Upon this record we find that the applicable rate was not and is not unreasonable. The overcharge on shipments moving via Humboldt should promptly be refunded. The complaint will be dismissed.

68 I. C. C.

No. 11701.

WILLAPA LUMBER COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, NORTHERN PACIFIC
RAILWAY COMPANY, ET AL.

Submitted February 17, 1922. Decided May 10, 1922.

Rates on lumber and forest products, in carloads, from points in western Washington on the Willapa Harbor branches of the Northern Pacific and Chicago, Milwaukee & St. Paul Railways to various destinations in Idaho, Utah, and Colorado, found unjust, unreasonable, and unduly prejudicial. Measure of maximum reasonable rates prescribed.

Joseph N. Teal, William C. McCulloch, and Rogers MacVeagh for complainants.

John F. Finerty, A. C. Spencer, W. A. Robbins, H. A. Scandrett, and J. M. Souby for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MEYER, CAMPBELL, AND COX.

CAMPBELL, *Commissioner*:

Exceptions were filed by the parties to the report proposed by the examiner, and the case was orally argued. We have reached conclusions differing somewhat from those recommended by him.

Complainants, operating lumber mills at South Bend, Raymond, Nallpee, Lebam, Globe, Walville, McCormick, Pe Ell, Doty, Dryad, Meskill, Bunker, and Littell, Wash., allege that the carload rates on lumber and forest products from these points to various destinations in Idaho, Utah, and Colorado are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to establish just and reasonable rates, not to exceed those contemporaneously applicable to the same destinations from Seattle and Aberdeen, Wash.; Springfield and Astoria, Oreg.; and other common points in the so-called coast group. Rates stated herein are in cents per 100 pounds.

All of the originating points, hereinafter called the Willapa Harbor points, are served by a branch line of the Northern Pacific which extends from Chehalis, Wash., 58 miles westwardly to South Bend, on Willapa Harbor. Some are also served by a branch of the Chicago, Milwaukee & St. Paul, hereinafter called the Milwaukee,

which extends from Chehalis to Raymond, 48 miles. The average distance of complainants' mills from Chehalis is approximately 30 miles. They are all located within the geographical limits of the so-called coast group, which embraces the territory west of the Cascades lying between Vancouver, British Columbia, on the north, through Washington and Oregon to the California-Oregon State line on the south. The destination territory comprises stations in Idaho on the Oregon Short Line, hereinafter called the Short Line, except those north of Pocatello on the Pocatello-Butte division, and east of McCammon; in Utah on the Short Line and various connections, including, among others, the Denver & Rio Grande and Los Angeles & Salt Lake; and in Colorado on the Denver & Rio Grande west of Pueblo.

The Short Line, a part of the Union Pacific system, connects with the western unit of the system, the Oregon-Washington Railroad & Navigation Company, hereinafter called the Oregon-Washington, at Huntington, Oreg. The latter carrier operates over the tracks of the Northern Pacific from Portland, Oreg., north through Chehalis to Tacoma, Wash., and over the tracks of the Milwaukee from Tacoma to Seattle, Wash. All three of these carriers have branch lines which extend from Centralia, Wash., 4 miles north of Chehalis, westwardly to Gray's Harbor, serving Aberdeen, Hoquiam, and other western Washington points. In eastern Washington a branch line of the Oregon-Washington, which extends in a northeasterly direction from Umatilla, Oreg., on its Portland-Huntington line, connects with the Northern Pacific and the Milwaukee at Wallula and Marengo, respectively. Farther east at Silver Bow, Mont., both the Northern Pacific and the Milwaukee connect with the Pocatello-Butte branch of the Short Line.

Joint rates on lumber are published from the Willapa Harbor points via several routes to the destinations under consideration, except to points on the Denver & Rio Grande, the Salt Lake & Utah, and the Salt Lake, Garfield & Western. The joint rates from the Willapa Harbor points applicable via the Northern Pacific to Wallula, or the Milwaukee to Marengo, and the Union Pacific lines beyond, since the August, 1920, increases have been generally 2.5 cents higher than the joint rates maintained to the same destinations from main-line and branch-line points of the Union Pacific, Portland and north thereof, in western Washington, including Seattle and Tacoma on Puget Sound, and Hoquiam and Aberdeen on Gray's Harbor; from Springfield and other Oregon points in the Willamette Valley on the Southern Pacific, south of Portland; and from Astoria, Oreg., and other lower Columbia River points on the Spokane, Portland & Seattle, which is controlled jointly by the Northern Pacific

and the Great Northern, hereinafter referred to as the grouped points. The rate to Salt Lake City, Utah, which may be taken as representative of the points to which joint rates apply, is 53 cents from the grouped points and 55.5 cents from Willapa Harbor points; from these latter points via the Northern Pacific through Chehalis to Portland thence Union Pacific lines, or via either the Northern Pacific or Milwaukee to Silver Bow and thence over the Short Line, the rate is 56.5 cents. The route via Portland is the shortest. The distances from the Willapa Harbor points to the destinations under consideration compare favorably with those from the competitive points, and the transportation conditions are substantially the same. The distance to Salt Lake City from South Bend is 1,033 miles, from Hoquiam 1,038 miles, from Seattle 1,083 miles, from Springfield 1,018 miles, and from Astoria 994 miles.

The following table, compiled from one of complainants' exhibits, shows the average distances via shortest route of six representative points from the various groups of origin to representative points on the Short Line, and the rates per 100 pounds applicable on fir lumber in effect November 1, 1920:

From points on—	To Boise.		To Pocatello.		To Salt Lake.	
	Average distance.	Rate.	Average distance.	Rate.	Average distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Northern Pacific, South Bend branch.....	613	52.5	838	55.5	1,008	55.5
Union Pacific, Gray's Harbor branch.....	627	50	852	53	1,022	53
Union Pacific, main-line.....	593	50	818	53	988	53
Spokane, Portland & Seattle, Astoria division.....	558	50	783	53	953	53
Southern Pacific in Oregon.....	616	50	841	53	1,011	53

To the destinations to which joint rates are not maintained the applicable combination rates from Willapa Harbor points are composed of the local rates to Chehalis, ranging from 3 cents at Littell to 8 cents at South Bend, plus the group rates beyond, subject to the tariff rules governing the construction of combination rates. The combination rate applicable from South Bend to Lehi, Utah, on the Denver & Rio Grande, a representative destination point to which joint rates do not apply, is 59.5 cents, composed of the local rate of 8 cents to Chehalis, plus the group rate of 53 cents beyond, as modified by the combination rule. Complainants seek the establishment of joint rates on the coast-group basis to the destinations under consideration, contending that there is no justification for the maintenance of rates from the Willapa Harbor points higher than are in effect from the competitive points. They are accorded the

coast-group rates to all points east of Pueblo, and also enjoy the same rates as the competitive points to destinations on the Short Line north of Pocatello and east of McCammon to Granger, Wyo.

The total annual production of the complaining mills is estimated at between 450 and 500 million feet, or approximately 20,000 carloads of 25,000 feet each, of which at least 95 per cent is said to be shipped to points outside the State of Washington. It is stated that the products of complainants' mills and of their competitors located throughout the coast group are the same in kind and quality, are used for the same purpose, and that the prices received therefor in common markets are the same. Lumber is generally sold on a delivered basis and under ordinary conditions competition is keen and the margin of profit small. Complainants assert that under such conditions it is impossible for them to market their lumber in this destination territory under the present rates or under any basis of rates higher than obtains from the competitive points. There is a large market for low-grade timbers in the mining industry in Utah, Idaho, and Colorado, in addition to the general demand for lumber for building purposes.

Defendants Northern Pacific and Milwaukee did not participate in the hearing. In justification of the rates assailed defendant Union Pacific states that the normal adjustment is to maintain higher rates from points north and west of Portland to the destination territory than from Portland, and that the establishment of the Portland rate from such points was due to competitive influences beyond its control. In support of this statement its witness related in detail the history of the rates from these points to Salt Lake City. Prior to 1908 the rate on lumber to Salt Lake City from Portland was 40 cents, from western Washington points via Silver Bow 45 cents, and from Willamette Valley and lower Columbia River points 40 cents. During that year in a series of cases referred to as the *Eastbound Lumber cases*, 14 I. C. C., 1-60, we established rates of 37.5 cents from Portland and 40 cents from the western Washington points to Salt Lake City, and in one of the cases required the establishment of rates to apply via Portland. At that time the Southern Pacific and the Union Pacific were operated under a common management, but the Oregon-Washington did not extend north of Portland. A few years later when the Oregon-Washington began to operate lines north of Portland to points on Puget Sound and Gray's Harbor, the Union Pacific published the 40-cent rate from those points to Salt Lake City. Subsequent to the separation of management of the Union Pacific and the Southern Pacific, the latter carrier, in 1915, reduced the rate from Willamette Valley points to Salt Lake City from 40 cents to the Portland

basis of 37.5 cents and provided for routing over its line through Roseville, Calif., and Ogden, Utah. During the same year the Union Pacific in order to secure some of this traffic established the 37.5-cent rate from the Willamette Valley in connection with the Southern Pacific through the Portland gateway, and contemporaneously reduced the rate from points on the Oregon-Washington in western Washington to the same destination territory from 40 cents to 37.5 cents, because, it is stated, it did not feel that it could properly participate in a rate from points on the Southern Pacific in the Willamette Valley lower than from points on its own lines in Washington. *Eastern & Western Lumber Co. v. O.-W. R. R. & N. Co.*, 41 I. C. C., 545.

In *Astoria Box Co. v. S., P. & S. Ry. Co.*, 48 I. C. C., 481, decided February 6, 1918, we found that the rates on fir lumber from Astoria and other lower Columbia River points to certain destinations in Idaho and Utah were unduly prejudicial to the extent that they exceeded the rates contemporaneously in effect from points in western Washington on the Oregon-Washington to the same destinations, whereupon the 37.5-cent rate was established to Salt Lake City from those points. On June 25, 1918, this rate was increased to 42.5 cents and the 40-cent rate, which had been continued in effect from points in western Washington on lines other than the Oregon-Washington, including Willapa Harbor points, to 45 cents. Under the August, 1920, general increases these rates were increased to 53 and 56.5 cents, respectively. In explanation of the 55.5-cent rate hereinbefore named as applicable from the Willapa Harbor points to Salt Lake City via the Wallula and Marengo gateways it was stated that prior to Federal control the Union Pacific, Northern Pacific, and the Milwaukee arranged to publish rates via those gateways to the destinations to which joint rates were maintained, 1 cent higher from main-line points between Portland and Seattle than the rates in effect via the Union Pacific lines direct, 2 cents higher from branch-line points west of the Portland-Seattle line, and 2.5 cents higher from points north of Seattle. Pursuant to this arrangement the 42.5-cent rate was increased to 44.5 cents in August, 1919, and to 55.5 cents following the 1920 general increases.

Counsel for defendants stated that it is the well-established practice of each of the trunk lines operating in western Washington to refrain from putting lumber mills located on competing lines on a rate parity with mills located on its own lines, to destinations served by them in intermountain territory, and that we sanctioned this practice in *Eastern Oregon Lumber Producers' Asso. v. R. R. Co.*, 39 I. C. C., 316, and *Sand Point Lumber & Pole Co. v. G. N. Ry. Co.*, 43 I. C. C., 59. To extend to the Willapa Harbor points the rate

applicable from the grouped points, defendants insist, will result in complaints seeking similar relief from other points in western Washington not located on the Oregon-Washington, and the ultimate disruption of the entire rate adjustment. This argument, however, is not a convincing factor in determining whether the rates under attack are unjust, unreasonable, or otherwise unlawful. Defendants also contend that the decision in the *Astoria Box Co. case, supra*, was based primarily on *City of Astoria v. S., P. & S. Ry. Co.*, 38 I. C. C., 16, in which we found that rates on class and commodity traffic, which included lumber, from Astoria to destinations in the eastern portions of Oregon and Washington, western Montana, and Idaho, known as the Inland Empire, were unduly prejudicial to the extent that they exceeded the rates from Seattle and Tacoma, and to certain points in this territory in so far as they exceeded the rates from Portland, Seattle, and Tacoma; and stress is laid upon the fact that Astoria had made extensive improvements in its port facilities before it was placed upon a rate parity with Seattle and Tacoma, whereas South Bend's port facilities apparently are very limited.

Upon all the facts of record we are of opinion, and find, that the rates assailed are unjust, unreasonable, and unduly prejudicial; and that for the future it will be unjust, unreasonable, and unduly prejudicial for defendants, in so far as they participate in the transportation, to fail or refuse to maintain joint rates on the coast-group basis on lumber and forest products, in carloads, from the Willapa Harbor points herein described to the territory of destination named while contemporaneously maintaining rates on like traffic on the coast-group basis to the same destinations from points on the Southern Pacific south of Portland, and points on the Spokane, Portland & Seattle west of Portland. An appropriate order will be entered.

68 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1434.
PROPORTIONAL GRAIN RATES FROM MINNESOTA AND
WISCONSIN TO EASTERN DESTINATIONS.

Submitted April 6, 1922. Decided May 18, 1922.

Proposed joint proportional rates on grain and grain products, in carloads, from Minneapolis, Minn., and other points in the Northwest to points in trunk-line territory and New England found not justified. Suspended schedules ordered canceled.

Richard L. Kennedy for all western respondents; *F. B. Townsend*, *Oscar Townsend*, *B. F. Parsons*, *H. E. Pierpont*, *E. B. Finegan*, *A. M. Fenton*, *H. H. Holcomb*, *A. MacKenzie*, *W. L. Martin*, and *A. H. Lossow* for individual western trunk-line respondents; and *James Webster*, *M. S. Connelly*, and *H. W. Forward* for central respondents.

C. A. Severance, *Warren S. Carter*, *H. P. Gallaher*, *M. H. Strothman*, *G. F. Ewe*, *H. A. Feltus*, *W. P. Trickett*, *John S. Pillsbury*, and *Charles C. Bovey* for Minneapolis Chamber of Commerce, Minneapolis Traffic Association, Minneapolis milling interests, and Minneapolis coarse-grain shippers; *C. T. Vandenoever* for Southern Minnesota Mills; *Francis W. Sullivan* for Duluth Board of Trade; *Jeffery*, *Campbell & Clark*, *J. S. Brown*, and *J. L. Boichus* for Board of Trade of Chicago and Chamber of Commerce of Milwaukee; *J. W. Irvine* for Louisville Board of Trade and Ballard & Ballard; *E. H. Hogueland*, *W. R. Scott*, *Fred B. Blair*, *R. T. Willette*, *W. J. C. Kenyon*, *C. V. Topping*, *J. N. Campbell*, *W. I. Sterling*, and *T. C. Thatcher* for Board of Trade of Kansas City and Kansas City milling interests, and for Southwestern Millers' League; *J. A. Kuhn* for Omaha Grain Exchange; *C. A. Lahey* for Quaker Oats Company; *E. S. Wagner* and *H. W. Loeftgren* for Star & Crescent Milling Company; and *G. F. Witt* for B. A. Eckhart Milling Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, CAMPBELL, AND COX.

EASTMAN, Commissioner:

By schedules filed to become effective November 1, 1921, respondents propose reduced proportional rates on grain and grain products, in carloads, applicable all-rail, rail-lake-and-rail, and rail-lake-and-

canal from Minneapolis, St. Paul, and Minnesota Transfer, Minn., hereinafter referred to as Minneapolis, and all rail from Duluth, Minn., Itasca, and Superior, Wis., hereinafter referred to as Duluth, to points in trunk-line territory and New England. Upon protests filed in behalf of the grain and milling interests of Chicago, Duluth, the Missouri River cities, and numerous other points, the operation of the schedules was suspended until March 31, 1922, and subsequently voluntarily postponed by respondents until July 1, 1922.

The suspended rates would apply only on shipments of grain or its products where the grain originates in territory from which the inbound rates to Duluth are the same as or lower than the inbound rates to Minneapolis, except that rates from intermediate points were included to observe the requirements of the fourth section and that a few other points were added through errors in tariff compilation. The territory referred to includes points in Montana and North Dakota, a few points in the northwestern and northeastern corners of South Dakota, and points in the northern part of Minnesota. Approximately one-half of the domestic spring-wheat crop is grown in this territory. The proposed rates are published as domestic rates and would apply on export traffic only in the absence of specific export rates.

Since March 25, 1918, the domestic all-rail rates on coarse grains and since February 28, 1920, the similar rates on grain products from Minneapolis and Duluth to trunk-line territory and New England have been combinations of proportional rates to and from Chicago. Theretofore joint rates were in effect on these commodities, but the rates on wheat have for many years been made on the Chicago combination. In the suspended schedules it is proposed to substitute for the combination rates on wheat, coarse grains, and grain products, where the grain originates in the described territory, proportional joint or "overhead" rates which will not break at Chicago. The relative adjustment from Minneapolis, Chicago, and Missouri River cities to New York City, taken as a typical point in the destination territory, is set forth in the following table, which shows, in cents per 100 pounds to New York, N. Y., the rates designated as "former rates," in effect just prior to the present rates; the present rates, which became effective in some cases on January 1, 1922, pursuant to our order in *Rates on Grain, Grain Products, and Hay*, 64 I. C. C., 85, and in other instances on March 18 or March 22, 1922; and the proposed rates from Minneapolis:

	Former rates.			Present rates.			Proposed rates.		
	Wheat.	Coarse grains.	Grain products.	Wheat.	Coarse grains.	Grain products.	Wheat.	Coarse grains.	Grain products.
<i>From Minneapolis.</i>									
<i>Minneapolis to Chicago.....</i>	<i>Cents.</i> 15	<i>Cents.</i> 15	<i>Cents.</i> 15	<i>Cents.</i> 13	<i>Cents.</i> 11.5	<i>Cents.</i> 13	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
<i>Chicago to New York.....</i>	30	30	30.5	30	30	30.5	.....	.....	.....
<i>Through rate.....</i>	45	45	45.5	43	41.5	43.5	43	40	43
<i>Via M., St. P. & S. S. M. and Sault Ste. Marie.....</i>	45	45	45.5	43	41.5	43.5	43	40	43
<i>Via Duluth; rail, lake, and rail.....</i>	.....	.....	41.5	.....	.....	39.5	.....	.....	1 39
<i>Via Duluth; rail, lake, and canal.....</i>	.....	.....	38.5	.....	.....	36.5	.....	.....	1 36
<i>From Kansas City.</i>									
<i>Kansas City to Chicago.....</i>	20.5	20.5	20.5	17.5	16	17.5	.....	.....	.....
<i>Chicago to New York.....</i>	30	30	30.5	30	30	30.5	.....	.....	.....
<i>Through rate.....</i>	50.5	50.5	51	47.5	46	48	.....	.....	.....

¹ Applies also on grain shipped in packages.

Over the all-rail routes the former rates were and the present and proposed rates are the same from Duluth as from Minneapolis. Had the proposed rates become effective on November 1, 1921, the through rates on grain from Minneapolis to New York would have been lower by 2 cents on wheat, by 2.5 cents on grain products, and by 5 cents on coarse grains than the Chicago combinations. The difference of 5.5 cents on all grains and grain products between the rates from Minneapolis and from Kansas City to New York would have been increased to 7.5 cents on wheat, 8 cents on grain products, and 10.5 cents on coarse grains. The present differences between the rates from Minneapolis and Chicago to New York are 13 cents on wheat and grain products, and 11.5 cents on coarse grains; between those from Kansas City and Minneapolis to New York, 4.5 cents on all grains and grain products. Were the proposed rates to become effective, the differences between Minneapolis and Chicago would be reduced by 1.5 cents on coarse grains and by 0.5 cent on grain products, and the differences between Minneapolis and Kansas City would be increased to the same extent. No change would occur in the case of wheat. Existing tariffs, however, would give Chicago and Milwaukee certain transit privileges under the proposed rates.

Broadly speaking, the justification offered for the suspended rates is the low cost of moving grain from Duluth by way of the Great Lakes to Buffalo and other Lake Erie ports. This movement is in cargo lots by boats which contract for their tonnage. Their rates are fixed only by the law of supply and demand, fluctuate from time to time with varying conditions, and are not under the supervision

or control of State or Federal authorities. During the period of Federal control of railroads, the demand for these cargo boats, which carry coal and ore as well as grain, exceeded the supply and consequently high rates were charged. The prices of grain and grain products were likewise high, and millers and dealers found it possible to absorb wide differences in transportation costs.

During the season of 1921, these conditions were reversed. The supply of cargo boats exceeded the demand, their rates were low, and the prices of grain and grain products, as compared with the prices which prevailed during the World War were also low. The charges of the cargo boats for handling grain from Duluth to Buffalo ranged from 1.5 to 4.5 cents per bushel. The latter rate prevailed only for a few days, immediately preceding the close of navigation, and during practically the entire season the rates ranged from 1.75 to 2 cents per bushel. Using the latter charge, 2 cents per bushel, respondents state the cost per 100 pounds of moving wheat from Duluth to New York as follows:

Duluth to Buffalo (lake)-----	3.34 cents.
Insurance -----	1.09 cents.
Ex-lake rate, Buffalo to New York-----	20.67 cents.
Duluth to New York-----	25.10 cents.

The rate on flour from Buffalo to New York is 21.5 cents per 100 pounds, making the cost of moving wheat from Duluth to Buffalo and flour beyond to New York, according to respondents, 25.93 cents per 100 pounds. It appears, however, that in some instances, at least, there are small additional charges applicable to water movement of wheat which do not accrue in the case of rail movement, and that the rate on flour from Buffalo to New York does not include elevation charges at Buffalo of 1 cent per bushel, or 1.67 cents per 100 pounds. Contrasted with the above figures, the all-rail rates on wheat and flour from Minneapolis to New York are 43 cents and 43.5 cents per 100 pounds, respectively, making the difference in favor of Duluth on wheat 17.9 cents and on flour 17.57 cents, not taking into consideration the additional water or elevation charges above mentioned. The Duluth protestants state that the cost of moving wheat lake-and-rail from Duluth to New York is 30.42 cents per 100 pounds, based on a charge by the cargo boats of 3.5 cents per bushel; but even at this figure the difference in favor of Duluth is 12.58 cents per 100 pounds.

The coarse grains differ from wheat in weight per bushel, and the charges of the cargo boats on such grains likewise differ, but the situation as between Duluth and Minneapolis is not materially different from that shown above in the case of wheat. Flour and other

grain products are not carried by the cargo boats, but are carried by the Great Lakes Transit Corporation, which joins with the rail carriers in joint lake-and-rail and rail-lake-and-rail rates. From Minneapolis the present rail-lake-and-rail rate on flour to New York is 39.5 cents, or 4 cents under the all-rail rate. The present lake-and-rail rate from Duluth is 33 cents. It is proposed to change the rail-lake-and-rail rate from Minneapolis to 39 cents, thus maintaining the 4-cent differential, but no tariffs have been filed changing the lake-and-rail rate from Duluth.

Respondents' exhibits show that Minneapolis is the largest milling center in the country, with a capacity of 99,860 bushels per day. It has an elevator capacity of 55,555,000 bushels, larger than that of any other grain market except Chicago, which has about the same capacity. At the hearing the Minneapolis millers and grain dealers appeared in support of the suspended rates, and also the Southern Minnesota Mills, a voluntary organization comprising 44 flour mills located in the southern part of Minnesota, in the eastern portion of South Dakota, and along the east bank of the Mississippi River in Wisconsin. These mills have a combined milling capacity of about 60,000 barrels per day and, having small storage capacity, draw a great deal of their wheat from the elevators at Minneapolis. Most of them have milling-in-transit privileges and thus pay the same through rates to eastern destinations, when they obtain their wheat from Minneapolis, as are paid by the Minneapolis millers.

The Minneapolis mills grind chiefly spring wheat, as do the southern Minnesota mills, although they often use a certain amount of winter wheat for blending purposes. Their brands of flour have been extensively advertised and are sought by the family trade, and they have in the past been able to command higher prices than many of their competitors. Duluth and Chicago have flour mills, but are not large milling centers. Important and growing competition comes from mills in Missouri, Kansas, Oklahoma, and other interior Western States, which mill principally winter wheat; but the competition upon which the Minneapolis millers lay the greatest stress at the present time is that of the mills at Buffalo and other Lake Erie ports and at eastern-seaboard and interior cities. It is these latter mills which reap the advantage of the low cargo rates on wheat. By reason of these low rates they are able to draw spring wheat from Duluth, and also when tariff conditions permit from Canadian lake ports, and ship it in the shape of flour to eastern consuming points at a total transportation charge materially lower than the charge on flour from Minneapolis.

It is chiefly to help the Minneapolis millers meet this competition of the eastern mills which are fed by the cargo boats of the Great Lakes that the suspended rates have been proposed, and of these suspended rates the one in which respondents are chiefly interested is the all-rail rate on flour. Lower rates on wheat and coarse grains are also proposed, but respondents apparently do not expect to stimulate substantially the movement of grain from Minneapolis, and prefer, indeed, that it be milled at that point or at neighboring points. They are apprehensive lest the immense milling industry centering at Minneapolis languish with a consequent diminution in the all-rail movement of grain products. Stress is laid, also, upon the great direct value of this milling industry to the farmers of the Northwest as a near-by market for their products and its equally great indirect value as a near-by source of stock feeds and similar by-products.

It is to be noted that the movement of flour by water from Duluth or other lake ports is not a matter of concern to respondents. As aforesaid, the cargo boats do not carry flour, which is transported only by package-freight steamers whose joint rates with rail carriers are made differentially with relation to the all-rail rates. The present differential of 4 cents between the all-rail and the rail-lake-and-rail rates on grain products from Minneapolis is satisfactory to respondents, and they seek to preserve rather than to diminish it in the suspended schedules. Their concern is over the low rates of the cargo boats on wheat, which they fear may lead to the loss of flour traffic all-rail.

The Minneapolis interests assert that a mere comparison of the receipts of grain at Minneapolis and Duluth fails to give a true picture of the situation. They claim that during the past two years it has become increasingly difficult to meet the competitive influences focusing upon the Duluth gateway; that they have not only lost business in eastern territory, but in order to retain business and preserve connections have been compelled to sell their products in this territory at a loss; that they have met the transportation differential in favor of their eastern competitors from their own coffers, a process which can not indefinitely continue; and that unless relief is afforded, they must abandon the eastern territory, with the possible exception of the family trade which has been built up through advertising.

The record, however, does not show that as yet much spring wheat has been drawn away from Minneapolis to Duluth for transportation down the Great Lakes to eastern mills or seaports. The following exhibit, showing shipments by lake of northern spring wheat from Duluth, was submitted by the Duluth protestant:

Year.	Bushels.	Year.	Bushels.
1910.....	17,577,678	1916.....	16,637,871
1911.....	20,787,443	1917.....	12,069,339
1912.....	50,997,764	1918.....	42,748,675
1913.....	48,326,205	1919.....	8,827,307
1914.....	33,222,409	1920.....	4,278,028
1915.....	55,094,139	1921 (11 months).....	9,536,558

The following table, also taken from an exhibit of the Duluth protestant, shows receipts in bushels of grain at Duluth and Minneapolis in the 11 months of 1921 as compared with the receipts in 1913, a year prior to the World War:

	Duluth.		Minneapolis.	
	Receipts.	Proportion.	Receipts.	Proportion.
1921 (11 months).	<i>Bushels.</i>	<i>Per cent.</i>	<i>Bushels.</i>	<i>Per cent.</i>
Wheat.....	50,791,676	30.8	114,154,480	69.2
Corn.....	5,227,168	34	10,146,170	66
Oats.....	6,060,381	17.5	28,521,150	82.5
Rye.....	12,621,097	71.7	4,982,370	28.3
Barley.....	4,957,966	28.2	12,641,530	77.8
Flaxseed.....	3,986,095	43	5,289,600	57
Total.....	83,644,383	32.3	175,735,300	67.7
1913.				
Wheat.....	72,703,614	39	111,189,640	61
Corn.....	542,962	6.2	8,189,090	93.8
Oats.....	9,922,107	29.9	23,250,730	70.1
Rye.....	1,453,609	20.4	5,652,260	79.6
Barley.....	13,779,224	28.9	35,521,320	71.1
Flaxseed.....	12,434,664	53	11,042,360	47
Total.....	110,836,180	36.2	194,845,400	63.8

Of the receipts of wheat at Duluth during the 11 months of 1921, 31,241,039 bushels were durum wheat, which is not ground in any quantity at Minneapolis and much of which is exported. Of the remainder, 4,392,909 bushels were winter wheat and 2,922,688 bushels were Canadian wheat.

At the time when the suspended rates were originally determined upon by respondents, they represented substantial reductions in the then existing rates. Subsequently the proportional rates east of Chicago were reduced by the eastern lines, and the proportionals west of Chicago were also reduced following our decision in *Rates on Grain, Grain Products, and Hay, supra*. At the present time, therefore, the suspended schedules, if they were permitted to take effect, would not lower the existing combination rate on wheat and would accomplish only slight reductions in the rates on grain products and coarse grains. Respondents concede that these reductions would not affect the situation very materially or afford marked

relief to the Minneapolis interests, but they wish us to find the schedules justified because of the principle involved. This principle they state as the right of the carriers "to establish through overhead rail rates to meet the competition of Duluth and the Lakes." If this right is established, it is expected that they will "at some time in the future, and possibly in the near future, suggest a new basis to apply from Minneapolis."

Before discussing the principle for which respondents contend, certain additional facts remain to be stated. The present rates from Minneapolis are regarded by the carriers as depressed by water competition. The short-line distance from Minneapolis to New York is 1,317 miles, as compared with 1,331 miles from Kansas City, a typical southwestern milling point, the difference in favor of Minneapolis being negligible. As already shown, however, Minneapolis has an advantage of 4.5 cents over Kansas City in the all-rail rates, and in *Rates on Grain and Grain Products*, 56 I. C. C., 133, we said, at page 143, that we were not persuaded, "in view of the influence of rail-and-lake movements from Minneapolis," that this difference is excessive. Comparison has also been made of the proportional rates from Minneapolis to Chicago with the rates from Buffalo to New York. The distances are approximately the same, but on wheat and flour the proportional rate is 13 cents, while the ex-lake rate from Buffalo on wheat is 20.67 cents and the local rate on flour 21.5 cents. The ex-lake rate on wheat includes an elevation charge of 1.67 cents.

In *Rates on Grain and Grain Products*, *supra*, where we had under consideration a proposed general revision of northwestern grain rates and practices through the various competing markets, the carriers strongly urged the desirability of rates breaking at the important grain markets. In regard to this we said, at page 137:

We have required the establishment of transit in few instances. When practicable, rates through important grain markets should break into definitely known inbound and outbound components. Such an adjustment is preferable to transit under a through rate, where the opportunities for complications in the application of rates and for undue preference resulting from the selected use of inbound expense bills in securing a desired outbound transit rate are multiplied in proportion to the greater volume of tonnage handled through important markets and the greater number of carriers that ordinarily serve such markets.

Returning to the question of principle raised by respondents, we have no hesitation in conceding that carriers may properly make rates to meet competitive conditions, so long as such rates are reasonably compensatory and so long as they do not give rise to undue prejudice or preference. It becomes necessary to consider whether the present case falls within this rule.

No direct evidence was offered to show whether or not the proposed rates are reasonably compensatory under the circumstances,

however, which fairly lead to this conclusion in the absence of evidence to the contrary. One circumstance is that the reductions under existing domestic rates are trifling. Another is that existing export rates are lower than the proposed rates. Still another is that the eastern lines are willing to join in these rates, although they suffer to a less extent from the diversion of wheat to the lake route since they have the haul from Buffalo and other Lake Erie ports.

That the proposed rates will unduly prefer Minneapolis and unduly prejudice competing milling points and grain markets is strongly urged by protestants. The question arises whether in meeting competitive conditions at Minneapolis respondents are failing to extend similar relief to other milling centers and grain markets which they serve and which are affected in like manner by these competitive conditions. In this connection it should be noted that respondents include not only the originating carriers at Minneapolis but also all lines operating between Chicago and the eastern seaboard, and that for the most part respondents participate in the transportation of grain and grain products from the southwestern markets and milling centers to eastern territory. Southwestern grain meets in the East the competition of northwestern grain moving from Duluth by the Great Lakes route, and southwestern millers, like those of Minneapolis, are affected by the competition of millers at Buffalo and other Lake Erie ports and at eastern-seaboard and interior cities.

Whether or not respondents should, if they extend lower rates to Minneapolis, at the same time grant corresponding reductions to southwestern points, is not wholly clear from the record. It is not demonstrated that the proposed rates on grain will unduly prejudice the southwestern grain markets, for if this grain does not move through Minneapolis, much of it will move through Duluth, and the extension to Minneapolis of rates which, while reduced, will continue to be higher than the transportation charges from Duluth by way of the Great Lakes will probably not materially change the situation to the injury of the southwestern points. While southwestern grain for export has outlets by way of the Gulf which are not to the same extent open to northwestern grain, the rates for such movement are generally greater than the all-rail export rates from Minneapolis to Atlantic ports.

It is with respect to the rates on grain products that doubt exists. As has been shown, the reduced rates on grain products are not proposed to meet water competition on such products, which are not carried by cargo boats, but to meet the competition of eastern mills which are fed by the grain which the cargo boats do carry. It seems to be true that Minneapolis mills grind chiefly spring wheat, while

the southwestern mills grind chiefly winter wheat, but the record does not enable us to determine with any degree of certainty whether this difference materially affects the competitive situation or whether the southwestern mills are as seriously affected by the low transportation charges on the Great Lakes as are the Minneapolis mills. If Minneapolis is to be afforded relief from competition with the eastern mills, can equal advantages be lawfully withheld from the southwestern millers? The record is not clear upon this point.

The above has reference to the all-rail rates. The Duluth protestant contends that the proposed reductions in the rail-lake-and-rail rates on grain products from Minneapolis by way of Duluth are unduly preferential, in that similar reductions are not proposed in the lake-and-rail rates from Duluth. Other protestants urge that they are unduly preferential, in that similar reductions are not proposed in the rail-lake-and-rail rates from Minneapolis through Lake Michigan ports. We think that there is merit in both of these contentions. At present the rail-lake-and-rail rates from Minneapolis equal the sum of the proportional rate from Minneapolis to Duluth plus the lake-and-rail rates from the latter. No good reason has been shown for changing this basis nor has it been demonstrated that the present difference of 6.5 cents is unduly prejudicial to Minneapolis or should be reduced. The proposed reduction is to be effected, it should be noted, by the joint action of the rail and water carriers and not by action alone of the rail carriers operating between Minneapolis and Duluth. Nor has good reason been shown for reducing the rail-lake-and-rail rates through Duluth and not reducing the corresponding rates through Lake Michigan ports.

Chicago and Milwaukee protestants object particularly to the establishment of joint or "overhead" rates in substitution for the combination rates now in effect. We adhere to the view that "where practicable, rates through important grain markets should break into definitely known inbound and outbound components"; but if the rates proposed by respondents are justified in other respects, they should not, in our opinion, be rejected because they depart from a particular plan of rate publication. Apparently it would be difficult, if combination rates were employed, to restrict the reductions to the origin and destination territories proposed.

Respondents concede, however, that Chicago, Milwaukee, and other intermediate markets are fairly entitled to transit privileges under the proposed rates, and they also concede, at least by implication, that the reductions should be confined to grain originating in territory where the inbound rates are not higher to Duluth than to Minneapolis and that their extension to grain originating in other terri-

tory would not be justified. The Chicago and Milwaukee protestants allege that under existing transit tariffs their markets would not in all cases be accorded transit privileges under the proposed rates, and both their witnesses and the witnesses of the Duluth protestants testified that transit rules and regulations at Minneapolis are so lax that the reductions would not in practice be confined to grain originating in the described territory.

These allegations, and the evidence offered in support thereof, were not effectively met by respondents or by the intervening Minneapolis interests. Their position is, in brief, that if the transit tariffs at Chicago and Milwaukee are not sufficiently comprehensive or if the rules and regulations at Minneapolis are too lax, these are matters which can be adjusted later and have no immediate bearing upon the questions at issue in this proceeding. With this view we are not in accord. If respondents propose rate reductions which they justify in part upon the ground that they are restricted to certain originating territory and upon the ground that they are subject to transit privileges at intermediate markets, they should be able to show that the rates will in fact be so restricted and that they will in fact be subject to such transit provisions.

It appears that in some important instances grain or grain products may be shipped from Minneapolis without the surrender of expense bills, thus tending at all times, except immediately after a transit check, to leave on hand expense bills in excess of the amount of grain actually on hand. For example, the rail-lake-and-rail rates on grain products, though evidently proportional in character, appear to be published as local rates and require the surrender of no inbound expense bills. Until policing rules are adopted which rigidly require the cancellation of inbound expense bills for each outbound movement by rail or otherwise and for local sales, the tendency to accumulation of excess expense bills will continue. So long as excess expense bills are available, the difficulty of restricting such rates as are here proposed to grain originating in the origin territory intended will be material.

As aforesaid, respondents under the conditions now existing have little interest in the proposed rates except for the principle involved, and they expect at some future date to propose other rates which will more effectively carry out this principle. Upon the present record we find that the schedules under suspension have not been justified and should be canceled, but this finding is without prejudice to the consideration of any similar rates in the future which may not be open to the objections which we have indicated above as applying to the rates now proposed.

An appropriate order will be entered.

REDUCED RATES, 1922.

No. 13293.

IN THE MATTER OF RATES, FARES, AND CHARGES OF
CARRIERS BY RAILROAD SUBJECT TO THE INTER-
STATE COMMERCE ACT.

Submitted March 15, 1922. Decided May 16, 1922.

1. Five and three-fourths per cent of the aggregate value of the railway property of carriers determined as constituting a fair return thereon on and after March 1, 1922.
2. Freight rates and charges found unreasonable on and after July 1, 1922, to the extent that they may exceed the rates in effect August 25, 1920, by more than specified percentages.

Francis I. Gowen, Henry Wolf Biklé, Clyde Brown, H. L. Bond, jr., George F. Brownell, John C. Bills, N. S. Brown, W. S. Bronson, E. H. Burgess, Theo. Reath, J. A. Stillwell, D. P. Connell, Guernsey Orcutt, William A. Eggers, Alex. H. Elder, W. M. King, Parker McColleston, James W. Carmalt, M. B. Pierce, E. A. Niel, and R. W. Barrett for carriers in the eastern group.

Frank W. Gwathmey, Charles E. Rixey, W. A. Northcutt, Edward D. Mohr, D. Lynch Younger, and W. N. McGehee for carriers in the southern group.

Fred H. Wood, H. A. Scandrett, B. W. Scandrett, A. B. Enoch, James C. Coleman, Frank H. Towner, C. S. Burg, W. F. Dickinson, O. W. Dynes, H. G. Herbel, Kenneth F. Burgess, M. M. Joyce, F. B. Townsend, M. G. Roberts, and C. Schonfelder, jr., for carriers in the western and mountain-Pacific groups.

Henry J. Hart, Charles H. Blatchford, W. A. Cole, and Edward C. Buckland for carriers in New England.

H. C. Martin for Grand Trunk system and Central Vermont Railway; *S. P. Forbes* for Chicago, Lake Shore & South Bend Railway Company; *Alfred G. Hagerty* for Toledo Terminal Railroad; and *J. R. Turney* for certain southwestern lines.

Ralph R. Bradley for American Electric Railway Association and Chicago North Shore & Milwaukee Railroad.

Alfred P. Thom for Association of Railway Executives.

Fred W. Putnam for regulating authorities of certain Western and Southern States; *John E. Benton* for National Association of Railway and Utilities Commissioners; *C. B. Bee* for Missouri Public Service Commission; *O. O. Calderhead* for Washington Department of Public Works; *J. H. Henderson* and *Fred P. Woodruff* for Iowa

Board of Railroad Commissioners; *Carl D. Jackson* for Railroad Commission of Wisconsin; *D. L. Kelley* for South Dakota Board of Railroad Commissioners and State of South Dakota; *J. A. Little* for Nebraska State Railway Commission; *Mason Manghum* for Virginia State Corporation Commission; *H. W. Prickett* for States of Arizona, New Mexico, Utah, Idaho, Wyoming, and Colorado; *J. F. Shaughnessy* for Nevada Public Service Commission; *P. A. Walker* for Oklahoma Corporation Commission; *Clyde M. Reed* for Kansas Public Utilities Commission; and *Frank Roberson* for Mississippi Railroad Commission.

L. M. Greenlaw for Pullman Company.

Glenn E. Plumb for various railway labor organizations.

Walter L. Fisher and *Forney Johnston* for National Association of Owners of Railroad Securities.

John S. Burchmore, *W. H. Chandler*, and *J. H. Beek* for National Industrial Traffic League.

Clifford Thorne for American Farm Bureau Federation and others.

Ernie Adamson, *Horace M. Andrews*, *E. P. Armknecht*, *Charles J. Austin*, *Frank H. Baer*, *F. H. Baldy*, *James Bale*, *W. D. Lindsay*, *Frederick L. Ballard*, *W. A. Barrows, jr.*, *Richard Peters, jr.*, *W. L. Moon*, *H. C. Crawford*, *C. S. Bather*, *A. E. Beck*, *George T. Bell*, *J. M. Belleville*, *C. S. Belsterling*, *Murray N. Billings*, *B. L. Glover*, *Samuel Blumberg*, *Reed M. Booher*, *T. A. Bosley*, *L. C. Boyle*, *Brown & Boyle*, *C. T. Bradford*, *J. P. Brown*, *W. P. Buffington*, *Luther M. Walter*, *Warren Burkhardt*, *Thomas J. Burke*, *Rush C. Butler*, *E. S. Ballard*, *Karl D. Loos*, *Graddy Cary*, *M. M. Caskie*, *W. H. Chandler*, *Clark & LaRoe*, *J. F. Callbreath*, *C. H. Farrell*, *McK. W. Kreigh*, *William W. Collin, jr.*, *Royal E. Cook*, *C. E. Cotterill*, *P. W. Coyle*, *S. H. Cowan*, *John W. Craddock*, *Fayette B. Dow*, *W. S. Creighton*, *D. A. Dashiell*, *C. J. Collings*, *E. S. DePass*, *Elmer Donnell*, *H. Durster*, *Eric E. Ebert*, *Chas. B. Ellis*, *Charles E. Elmquist*, *M. M. Emmert*, *Charles Ervin*, *A. R. Fallon*, *R. C. Fulbright*, *Edgar Gengenbach*, *E. M. Gleason*, *R. H. Goebel*, *C. J. Goodyear*, *Thomas E. Grady*, *E. B. Gaines*, *E. L. Greever*, *W. E. E. Koepler*, *E. S. Gubernator*, *Edward A. Haid*, *P. M. Hanson*, *Chas. M. Haskins*, *Harry F. Masman*, *Arthur B. Hayes*, *J. B. Hayes*, *H. G. Huhn*, *C. W. Hayward*, *C. B. Heinemann*, *G. Stewart Henderson*, *T. M. Henderson*, *H. R. Heydon*, *George F. Hickborn*, *S. C. Higgins*, *E. H. Hogueland*, *Henry B. Hunter*, *D. F. Hurd*, *C. G. Hylander*, *Ralph Merriam*, *Francis B. James*, *E. H. Scott*, *Russell C. Jones*, *F. W. King*, *Lewis A. Nuckols*, *H. W. Knoche*, *Willur LaRoe, jr.*, *F. A. Leffingwell*, *James C. Lincoln*, *W. C. Lindsay*, *C. L. Lingo*, *Robert Hula*, *F. T. Bentley*, *John J. Low*, *Walter E. McCornack*, *Harry Davis*, *A. J. McGehee*, *E. W.*

McKay, W. D. McKinney, J. L. Malone, W. J. Manley, C. R. Marshall, B. F. Martin, L. R. Martin, F. H. Cogswell, W. H. Miller, W. T. Mitchell, Frank G. Moore, Herman Mueller, C. J. Neekamp, J. V. Norman, Axel H. Oxholm, H. R. Park, F. E. Paulson, W. F. Clark, R. W. Poteet, Homer B. Price, H. W. Prickett, W. A. Prinsen, F. M. Renshaw, H. C. Reynolds, Charles Rippin, H. D. Rhodehouse, J. L. Roberts, John Andrew Ronan, J. L. Roney, R. W. Ropiequet, Wm. E. Rosenbaum, R. D. Rynder, Paul E. Blanchard, D. J. Sims, William D. Smith, A. W. Stebbings, Robert L. Stover, Frank W. Sullivan, Frank M. Swacker, Henry M. Tarr, Joseph N. Teal, William C. McCulloch, J. H. Tedrow, D. W. Thomas, G. L. Tillery, H. W. Trafton, F. J. McArdle, C. P. Barnes, W. K. Vandiver, Albert L. Vogl, Jonas Waffle, E. W. Warner, Lacey Walker, Richard Waterman, E. B. Webb, George B. Webster, T. T. Webster, Albert R. White, J. W. White, Frank E. Williamson, B. A. Word, and Walton O. Wright for various civic organizations and shippers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This proceeding was instituted upon our own motion for the purpose of determining whether, and to what extent, if any, further general reductions in rates, fares, and charges of carriers by railroad applicable in interstate or foreign commerce may lawfully be required under section 1 or other provisions of the interstate commerce act upon any commodities or descriptions of traffic; and also to determine what will constitute a fair return on and after March 1, 1922, under section 15a (3) of the interstate commerce act.

The important questions for determination are whether present rates, fares, and charges, in the aggregate, as a whole or in the several rate groups defined in *Increased Rates, 1920*, 58 I. C. C., 220, 489, *Authority to Increase Rates*, *ibid.*, 302, or upon specified commodities or descriptions of traffic, are or will be unreasonable under section 1 or other provisions of the act; whether such rates, fares, and charges are those which will most nearly produce a fair return, as provided in section 15a; and what the fair return shall be on and after March 1, 1922. When this proceeding was instituted there were pending before us several petitions filed by carriers and by various organizations of shippers in which we were asked to enter upon general investigations into the reasonableness of existing rates and charges.

A copy of our order instituting this investigation was served upon all common carriers by railroad subject to the interstate commerce act which file annual reports with us, including the more important electric railroads, upon the governor of each State, and upon the

tribunal thereof having regulatory powers over common carriers by railroad. General notice was given to shippers and the public. Prior to the hearings the carriers were requested to include in their evidence data designed to develop, *inter alia*, to what extent since August, 1920: (a) carriers have realized the fair return contemplated by section 15a; (b) operating expenses have been reduced; (c) the cost of fuel to carriers has declined; (d) rates and charges have been further increased or decreased; and also to what extent (e) net income can be increased by enhanced economy and efficiency of operation. Hearings were held in Washington in December, 1921, and January, February, and March, 1922, at which everyone desiring to offer evidence was heard. The case was submitted upon oral argument and briefs.

In *Increased Rates, 1920, supra*, decided July 29, 1920, we designated rate groups as provided in section 15a and authorized substantial increases in freight rates, passenger fares, and certain charges. Late in that year there developed in this country a pronounced and long-continued business depression, nation wide, a phase of the general *post bellum* adjustment throughout the world. Practically all traffic and all industry have been affected. There has been substantial reduction in the price of most commodities without a corresponding reduction in rates. There is a definite conviction in the minds of the shipping public that the present rate level is unreasonably high, is an effective barrier to the return of business activity, prosperity, and the usual volume of traffic, and that it should be substantially reduced.

FAIR RETURN.

Section 15a (3) of the interstate commerce act provides:

The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: *Provided*, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account.

In *Increased Rates, 1920, supra*, we exercised the discretion conferred upon us and to the 5½ per cent return added the one-half of 1 per cent during the two-year period to make provision for improvements, betterments, or equipment.

Since August, 1920, the carriers as a whole, or as a whole in their respective rate groups, have failed by a considerable margin to earn the authorized return. It is urged by some that under existing conditions the question of a fair return for the future is academic and that it is not necessary for us to determine a percentage of return at this time. We do not take this view. The operation of economic forces which have prevented, or which may hereafter prevent, carriers from earning a fair return under the adjustment of rates then prevailing does not constitute a bar to determination of what a fair return should be. By the qualifying words "as nearly as may be," Congress recognized that conditions during certain periods might prevent such realization under any adjustment of rates.

The provisions of section 15a in this respect have been framed in recognition of constitutional guaranties of fair return upon property devoted to public use. They also declare the policy of Congress—in its control of its interstate commerce system * * * to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all of the work it does. *Railroad Commission of Wisconsin et al. v. C. B. & Q. R. R. Co.*, 66 L. ed. (U. S. Sup. Ct.) 236, 42 Sup. Ct. Rep. 232, decided February 27, 1922.

The determination of what will constitute a fair return under paragraph (3) of section 15a is, in our judgment, a function distinct from that of initiating and adjusting rates under paragraph (2) of that section. Section 15a, reasonably construed, contemplates the determination of a return which the carriers, collectively or in rate groups, may attain over a period of time under rates adjusted from time to time with that object in view. The phrase "from time to time" does not mean that we should adjust and readjust rates to meet business fluctuations. Whether carriers may be able to earn an aggregate net railway operating income equal to a fair return must depend to a large extent upon business conditions. In the *Wisconsin case, supra*, the court said:

The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in section 15a to be one of the purposes of the bill.

We have before us a practical problem. The record emphasizes the need of a constant influx of capital to meet the country's growing transportation needs. In the 10-year period ending June 30, 1916, a period of relatively low costs of materials, supplies, and labor as compared with present costs, there was a net addition to capital account for new lines and extensions, additions, betterments, and general expenditures properly chargeable to that account which aggregated about 5½ billion dollars, or an average of 574 millions per annum. Accord-

ing to an exhibit of the carriers, expenditures for such purposes in the 12 months ended September 30, 1921, aggregated about 365 millions, an average of 1 million a day. This omits certain roads not reporting. The carriers estimated that, based on the volume of traffic which they were then handling, capital expenditures in the year 1922 should approximate 458 millions, and that if transportation facilities are to be expanded in 1922 as they should be to provide for a materially increased volume of business, the expenditure this year should be approximately 858 millions, or an average of 2½ million dollars a day. Others estimate lesser amounts. Some authorities on transportation and economic conditions place the requirements for the next few years at even higher amounts, to come in part out of earnings, and predict that, unless there is immediate resumption of new construction, a return of anything like normal business will result in "strangulation for lack of transportation." Others are of opinion that the existing transportation machine, if properly maintained, with necessary additions in the way of terminals and track-age facilities, is adequate to handle the business which may reasonably be expected in the immediate future.

It is obvious that large additions to capital must continually be made. Most of the capital will have to be acquired through the issuance of securities which must be sold in the markets of the world in competition with other classes of securities. Within the next few years the Government must provide for the refunding of some 6 billions of its indebtedness. The carriers must attract money by rates of return and stability of investment. While return must not exceed a reasonable charge against the public served, it must be such as to obtain the needed new capital. It is necessary to determine and make public, as required by section 15a, a percentage of fair return. Determination of the percentage implies, or carries with it, no guaranty. Read in connection with the provision for recapture of one-half of the excess above 6 per cent it is, instead, a limitation.

Because the yield on some railroad bonds has declined to something over 5 per cent it does not follow that a fair return should approximate that percentage. We do not deal alone with interest rates on mortgage obligations, or with the more favorably located and prosperous carriers whose credit conditions may enable them to obtain money at relatively advantageous rates. In the recapture provisions Congress recognized that uniform rates on competitive traffic which would adequately sustain all the carriers would produce substantially and unreasonably more than a fair return for some carriers. We should not take the few, and the highest type of their securities, as the basis for determining what shall be a fair return for all. It can hardly be disputed that the carriers of this country should

not continue to provide for all needed capital by successive bond issues. Issuance of bonds in a disproportionate degree unduly increases fixed charges and tends to weaken the credit of the carriers. In such a process eventually a point must be reached where no new capital can be raised, except for short terms at high rates. No substantial proportion of the new capital has been raised by issuance of stock since 1907.

Notwithstanding the failure of the carriers to earn the 6 per cent allowed in the first two years of operation under section 15a, there is an upward trend in railroad securities, which share in the improved conditions that have prevailed generally in the money market. This is urged upon us as an argument for reduction in the percentage to be determined. Other elements, however, are to be considered. The intent of Congress was to create a steady and reliable flow of money "for enlarging such facilities in order to provide the people of the United States with adequate transportation." A substantial reduction in the percentage of return might be unsettling in its effect, particularly in light of the fact that the return allowed in 1920 was not realized. The fact that a utility may reach financial success only in time or not at all is a reason for allowing a liberal return on the money invested in the enterprise. *Galveston Electric Co. v. City of Galveston*, 42 Sup. Ct. Rep., 351, decided April 10, 1922.

In numerous cases cited, courts and regulating authorities of States have recognized that public utilities and railroads may be permitted individually to earn under reasonable rates at least 6 per cent upon fair value. In some instances higher rates of return have been approved. But we are here considering return upon "the aggregate value of the railway property."

The interstate commerce act in many provisions other than those quoted indicates that 6 per cent may be regarded as a fair return. Paragraph (6) of section 15a provides for the disposition of net railway operating income in excess of 6 per cent of the value of the property held for and used in the service of transportation. One-half of the excess goes into a reserve fund, which may be drawn upon for certain purposes, in accordance with paragraph (7), when net railway operating income for any year is less than a sum equal to 6 per cent upon the value. Under paragraph (12) we may make loans from the general railroad contingent fund, such loans to bear interest at the rate of 6 per cent per annum. Under paragraph (14) we may lease equipment or facilities purchased from the general railroad contingent fund, the rental charges to be at least sufficient to pay a return of 6 per cent per annum plus allowance for depreciation. That Congress by direct legislation fixed the fair return for the period of two years beginning March 1, 1920, at the rate of 5½ per cent, to which, in our discretion, we might add not exceeding

one-half of 1 per cent, is a matter which may fairly be considered in the determination of the rate for the period immediately ensuing. But, taken in connection with the other provisions of section 15(a), it does not constrain us to consider $5\frac{1}{2}$ per cent as maximum in determining a fair return for the ensuing period.

Under our system of accounts all charges to the account "railway tax accruals" are deducted from railway operating revenues before arriving at railway operating income, and all State and Federal taxes, income or other, relating to carriers' railway property, operations, and privileges, are charged to that account. This method of accounting was recently sanctioned by the Supreme Court of the United States in *Galveston Electric Co. v. City of Galveston*, *supra*. As indicated by the Court, the net income under this accounting procedure is to the stockholder a tax-exempt income, and this fact should be considered in determining what return shall be deemed fair.

The railway operating income, increased or diminished, as the case may be, by the credit or debit balances in the accounts known as equipment rents and joint-facility rents, becomes net railway operating income, the amount of which is less than it otherwise would be by the amount of income tax accrued or paid. The term "net railway operating income" is defined in paragraph (1) of section 15a. Under paragraph (3), above quoted, rates are to be so adjusted that carriers as a whole or in designated rate groups will earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return. If this were realized in any instance the carrier would receive that return over and above all taxes, including the Federal tax on income, and if the fair return as determined and made public by us was 6 per cent the carrier would hold that return "tax free" in the sense that after payment of its income tax it would still have left the 6 per cent.

Railway corporations, like all others, are subject to income taxes which, since January 1, 1922, amount to 12.5 per cent on their net income less deductions computed as provided in the income tax law, 42 Stat. L., 277. In our view railway corporations should, like other corporations, pay their Federal income taxes out of the income, rather than collect it, in effect, from the public in the form of transportation charges adjusted to enable it to retain the designated fair return over and above the tax. We may observe that a fair return of 5.75 per cent, representing an aggregate annual net railway operating income arrived at after deducting, among other things, the Federal income tax on a return of 6 per cent, would be approximately the equivalent of a fair return of 6 per cent, out of which the Federal income tax was payable.

RAILWAY PROPERTY VALUE.

In *Increased Rates, 1920, supra*, one of the material facts to be determined was the aggregate value of the properties of the carriers held for and used in the service of transportation. As was pointed out, the territorial grouping designated by us differs somewhat from that proposed by the carriers; but, inasmuch as the record dealt principally with the three major groups as defined by the carriers, the evidence was considered, in respect to grouping, as presented by the carriers and others then before us.

Upon consideration of all of the facts and matters then of record, and those which, under section 15a, we were either required or authorized to consider, we found—

that the value of the steam-railway property of the carriers subject to the act held for and used in the service of transportation is, for the purposes of this particular case, to be taken as approximating the following:

Eastern group, as defined by the carriers	\$8, 800, 000, 000
Southern group, as defined by the carriers	2, 000, 000, 000
Western group, as defined by the carriers, including both the western and Mountain-Pacific groups herein designated.....	8, 100, 000, 000
<hr/>	
Total	18, 900, 000, 000

For reasons there stated no apportionment of the aggregate value of the properties in the western group, as defined by the carriers, was made to show the value of the properties in the western and mountain-Pacific groups, as we defined them. Nor was there any estimation of the aggregate value of the properties of electric railways other than those operated by steam roads, or of the boat lines.

In the instant proceeding there is little of record which goes directly to the subject of value. There has been a general acceptance by carriers and shippers of the value taken in our former determination as an appropriate basis for the purposes of the present proceeding. The respondent carriers have not attempted to show that that value should be increased, other than by appropriate consideration of the subsequent increments to the transportation plant. We have before us deductions made by certain of the State commissions and shippers, based upon the results of the valuation work under section 19a of the interstate commerce act so far as announced, and also computations based upon the market value of outstanding stocks and bonds.

More than 20 months have passed since our former determination, and in that period the valuation of the railroads under section 19a has gone forward. The work is still incomplete, but has progressed to such an extent that we may accept the results with fuller assurance, both as to particular roads and as showing general trends and princi-

ples. In our administration of various sections of the act, and in our certification of standard return for the purposes of the Federal control act, we have had occasion to make further investigation and corrections of investment accounts of the carriers.

The various other values and elements of value, as set forth in *Increased Rates, 1920, supra*, pages 228-229, have been reexamined in the light of the present record and the requirements of section 15a. We find no present reason to disturb the value taken by us in that proceeding as approximating the sums there stated, except to the extent that subsequent additions to or withdrawals from the property in service, including materials and supplies and working capital, and further depreciation, make adjustment necessary. Whether the value taken by us in 1920 should stand without consideration of these later items or not, the difference would be reflected only in fractions of per cents of the returns hereinafter indicated as the results of operation.

REVENUES AND EXPENSES.

For the purposes of the increases of 1920 we designated four rate groups. The eastern and southern groups corresponded approximately with official and southern classification territories, respectively. West of these were the western and the mountain-Pacific groups, the division between the last two being made on a line following the western boundaries of North Dakota, South Dakota, and Nebraska, thence southward through Colorado and New Mexico along the lines of the Union Pacific and the Atchison, Topeka & Santa Fe. Theretofore our current statistics were compiled according to a threefold division only, namely, for the so-called eastern, southern, and western districts. The eastern and southern groups differed from the eastern and southern districts chiefly in that the Norfolk & Western and the Chesapeake & Ohio, except certain branches, the Illinois Central north of Cairo, and a few other roads in the southern district were included in the eastern group. The western and mountain-Pacific groups covered approximately the western district. In order to facilitate comparison with statistics of past years, and presentation of data in approximate accordance with the rate groups so designated, our statistics were modified by segregating the data for the roads above mentioned, not including the Illinois Central north of Cairo, as a so-called Pocahontas region. The Illinois Central, both north and south of Cairo, is still included in our statistics for the southern district. In this proceeding the parties generally presented statistical data in accordance with our statistics as now currently compiled, and not strictly in

accordance with the rate groups designated. We shall hereinafter refer to the eastern district and Pocahontas region combined as the eastern group; the southern district, excluding the Pocahontas region but including all of the Illinois Central, as the southern group; and the western district as combining both western and mountain-Pacific groups.

Federal control terminated with the month of February, 1920. In the succeeding six months a definite income was guaranteed to most rail carriers by the transportation act, 1920. The net railway operating income for 1921 of Class I carriers, including large switching and terminal companies, yielded returns of 3.30 per cent in the eastern group, 2.60 per cent in the southern group, 3.50 per cent in the western and mountain-Pacific groups, and 3.31 per cent for the United States as a whole, on the valuation for all roads taken by us in *Increased Rates, 1920, supra*, for the purposes of that proceeding, adjusted by the carriers to cover Class I roads only, together with additions and betterments on Class I roads aggregating \$605,000,000 for the year ended December 31, 1920. The following tables reflect for Class I carriers, including switching and terminal companies, the trend of operating revenues, expenses, and income by calendar years 1916-1921, and of net railway operating income since September 1, 1920, by months, the rate of return being adjusted to an annual basis according to seasonal variations:

Calendar year.	Freight revenue.	Passenger revenue.	Mail revenue.	Express revenue.	All other operating revenues.
1916.....	\$2,574,740,215	\$707,757,469	\$61,227,765	\$90,311,885	\$191,215,037
1917.....	2,834,119,707	827,216,574	58,793,643	106,924,818	223,408,837
1918.....	3,458,190,626	1,032,671,429	53,563,162	126,231,839	255,936,901
1919.....	3,556,918,712	1,180,010,266	57,456,159	127,708,607	261,970,477
1920.....	4,323,650,077	1,287,423,443	150,816,975	143,858,272	319,668,478
1921.....	3,918,699,970	1,153,752,002	95,810,375	104,633,596	290,336,279

Calendar year.	Total operating revenues.	Railway operating expenses.	Net railway operating income.	Operating ratio.	Freight revenue per freight-train mile. ¹	Passenger revenue per passenger-train mile. ¹
1916.....	\$3,625,252,371	\$2,376,372,042	\$1,051,543,800	Per cent. 65.55	\$4.00	\$1.21
1917.....	4,050,463,579	2,858,212,210	974,778,937	70.57	4.31	1.42
1918.....	4,926,593,957	4,017,209,501	693,111,170	81.54	5.39	1.92
1919.....	5,184,064,221	4,419,441,949	516,290,090	85.25	6.20	2.16
1920.....	6,225,417,245	5,830,326,686	58,151,863	93.65	6.80	2.31
1921.....	5,563,232,215	4,597,479,241	614,810,531	82.64	7.38	2.12

¹ Not including switching and terminal companies.

Net railway operating income of Class I carriers.
["d" equals "deficit."]

Year and month.	United States.		New England.		Eastern group, including New England.		Southern group.		Western district.	
	Amount.	Rate of return. ¹	Amount.	Rate of return. ¹	Amount.	Rate of return. ¹	Amount.	Rate of return. ¹	Amount.	Rate of return. ¹
1920.										
September.....	\$78,310,311	Per cent.	\$703,454	Per cent.	\$30,094,777	Per cent.	\$6,001,160	Per cent.	\$39,394,374	Per cent.
October.....	86,455,487	3.90	d	0.96	35,117,920	3.43	6,008,738	3.04	45,328,841	4.98
November.....	64,343,703	4.43	d	Def.	22,934,137	4.29	3,234,938	3.02	28,174,928	4.94
December.....	10,228,583	3.16	d	Def.	5,774,983	3.23	4,442,153	1.60	2,008,445	3.39
		.68	d	Def.		.64		1.93		.39
1921.										
January.....	d	Def.	d	Def.	d	Def.	1,037,071	90	d	Def.
February.....	d	Def.	d	Def.	d	Def.	479,338	.28	2,008,930	.46
March.....	30,095,192	2.20	d	Def.	11,713,543	2.01	4,019,196	1.94	14,837,443	2.43
April.....	29,248,874	2.12	d	Def.	16,457,571	2.42	3,200,044	1.76	10,401,359	1.89
May.....	37,080,854	2.32	d	Def.	21,028,583	2.77	2,002,227	1.06	14,049,859	2.16
June.....	51,641,014	3.01	d	Def.	26,606,556	3.24	1,890,106	1.09	23,165,353	3.21
July.....	60,286,521	4.46	d	Def.	31,194,837	4.14	4,609,335	3.38	32,894,149	5.04
August.....	90,241,108	5.01	d	Def.	35,333,432	4.09	4,371,165	2.80	50,526,556	6.47
September.....	87,174,101	4.61	d	Def.	34,800,454	4.08	7,083,573	4.28	45,497,074	5.20
October.....	105,453,300	5.40	d	Def.	40,734,347	4.96	10,467,356	5.27	54,251,157	5.80
November.....	66,108,233	3.86	d	Def.	22,678,751	4.76	6,198,613	3.07	27,523,729	3.29
December.....	51,588,316	3.44	d	Def.	30,242,294	5.14	11,309,452	4.92	10,136,540	1.48
Total for 1921 *	614,810,581	3.31	1,051,336	.13	271,012,336	3.30	58,905,004	2.60	286,803,291	3.80

¹ The value upon which this return is computed is that taken by the commission for the purpose of increased rates, 1920, same, prepared by the carriers upon the basis of the material and supplies on hand

The decrease in net railway operating income shown between October, 1920, and July, 1921, was due to decline in traffic. The marked increase in that income during the last six months of 1921 was due to increased traffic and lowered operating costs. Deficits were experienced in January and February, 1921, in the eastern group and in January, 1921, in the western district. In the southern group the rate of return in those months was less than 1 per cent, although the tonnage handled in January was high as compared with the remainder of the year, bearing in mind ordinary seasonal variations. Ordinarily, except in the southern group, traffic begins to increase in the spring months and reaches its peak in the harvest months, August to October. In the south traffic during the summer months is light and the heavy months are October, November, and December. The principal reductions in costs accomplished during 1921 were brought about by reductions in force, wage reductions ordered by the Railroad Labor Board effective July 1, and gradually receding prices of materials and supplies. As the combined result of the higher level of rates, fares, and charges and of these reductions in operating costs, the net railway operating income of the carriers as a whole for 1921 was substantially greater than that for 1920, although the ton-mileage in 1921 was less than in any year since 1915 and approximately 25 per cent below that of 1920.

The carriers state that they have applications pending before the Railroad Labor Board, seeking reductions in wages of their employees; and signify that if these applications are acted upon favorably corresponding reductions will be made in freight rates, taking credit for reductions previously made. They urge that if, in our judgment, the present high level of rates is made necessary by wage scales higher than those of comparable labor in other industries, we should make that fact known to the public. Railway labor organizations contend that there is no necessary relationship between transportation charges and wages of employees. They challenge the position taken by carriers and some shippers that reductions in transportation charges can not be made without contemporaneous wage reductions.

In the calendar year 1916 the compensation to employees of Class I carriers was \$1,468,576,394. Although the revenue ton-mileage and the number of employees was considerably less in 1921 than in 1916, the pay roll in 1921 was \$2,800,896,614, an increase of \$1,332,320,220, or nearly 91 per cent. This increase constitutes more than 20 per cent of the operating revenues of 1921 and equals more than one-third of the operating revenues of 1916. Reductions in wages have been made since June 30, 1921. Based on wage rates and working conditions prevailing at the close of 1921 the per cent of increase in

pay roll, 1921 over 1916, making no allowance for the small traffic in 1921, would be 77.7 per cent. The present wages are still far above the pre-war level. The exact percentage depends, among other things, on whether the computation is made on an hourly or a monthly basis, the rate per hour having increased relatively much more than monthly earnings on account of the reduction in hours per employee. The hourly basis is the more significant in effect on operating costs, although the monthly basis is of more importance to employees. It is not our function to deal with wage scales and we express no opinion as to what the rates of pay should be. But we must recognize the connection between necessary revenues and present relatively high operating expenses.

EFFICIENCY AND ECONOMY IN OPERATION.

The statute provides that in exercise of our power to prescribe just and reasonable rates we shall establish rates such that carriers collectively shall earn a fair return under honest, efficient, and economical management. One of the matters for consideration in this proceeding is the extent to which net income can be increased by enhanced economy and efficiency in operation. The record indicates that the railroads individually, and collectively through their associations, have been and are devoting their attention to this matter. Substantial progress has been made in standardizing the various parts of equipment, thus increasing their interchangeability and promoting economy in equipment repairs. Committees of these associations are engaged upon plans to lower the unit cost of car repairs, fuel, and other items, and to reduce loss and damage. The evidence indicates realization of certain savings and improvements in operation. We are investigating methods of increasing economy and efficiency of operation.

During the war various governmental agencies, in cooperation with shippers, brought about material increases in car loading. The carriers direct our attention to the fact that the loading per car during the 12 months ended September 30, 1921, was 28.5 tons, which is substantially the same as that during the war years. Since February, 1921, for various causes, some of which are temporary in character and beyond carriers' control, the average car loading has declined.

The percentage of empty-car mileage to loaded-car mileage was greater during the 12 months ended September 30, 1921, than during any corresponding period within the past nine years. The carriers' existing car-service rules are based upon ownership and control by each carrier of its cars. The increase in the movement of empty cars resulted from the carriers' practice, then, and now, of returning cars

empty to the owning carrier when loads are not available. The business depression which then prevailed prevented the usual number of loaded movements, and thus brought about the increase in empty-car mileage.

Representatives of owners of railroad securities appeared and urged adoption of a plan which contemplates coordination and unification of operations of carriers, more particularly with respect to the purchase, repair, distribution, and control of freight cars. The proponents estimate that this plan would result in large economies. Respondent carriers introduced little testimony with respect to this plan and gave no indication of intent to adopt any similar plan. It is evident that the full economies predicted would not be immediate, that there would be difficulties in attainment, and that heavy expenditures of capital would be required. Manifestly one of the greatest problems confronting the carriers to-day is to provide efficient service at a reasonable cost. If the purpose of section 15a to afford carriers a reasonable return is to be attained, earnest efforts toward reduction of operating expenses in all possible ways consistent with good service must be continued. The far-reaching importance of such proposals calls for a more intensive study by carriers and the proponents than appears to have been made.

Consideration is being given by the carriers to cooperation in the use of facilities. The joint use of facilities established during Federal control has been continued in many instances, and some progress is being made in the direction of further cooperation. The record does not disclose any general lack of efficiency.

MAINTENANCE.

The significance of the return of 3.31 per cent given above for Class I railroads during 1921 depends to a considerable extent on whether the maintenance charges for that year represented adequate upkeep. Certain executives testified that the net railway operating income which resulted from the operations of 1921 was obtained only by forced economies which are neither in the public interest nor susceptible of indefinite continuance; that these economies took the form of inadequate maintenance; that the hours of labor consumed and the quantities of material applied in maintenance of way and structures on certain lines was less in 1921 than during the average of years in the test period; and that in general no more was done than was necessary to keep the lines in a condition safe for operation.

The carriers generally seem to have taken the fact of undermaintenance during 1921 for granted rather than to have undertaken to

prove it. Individual carriers have proved its existence in their own properties. Maintenance charges of Class I roads aggregated \$2,017,700,867 in 1921, more than in any preceding year except 1920, when the total was \$2,623,985,448. The decrease of 1921 under 1920 was \$606,284,581, or 23.1 per cent. The volume of traffic in 1921, as measured by ton-miles, was about 25 per cent less than in 1920. Unusual features in the operations of 1920 make that year unreliable as a measure of what the annual outlay for maintenance should be. It was a period of peak prices, when the greatest ton-mileage and passenger-mileage in the history of the railroads moved under most adverse conditions. Moreover, labor and material costs were lower in 1921 than in 1920. In relation to total operating expenses, maintenance charges in 1921 were almost the same as in 1920, the percentages being 43.6 and 44.1, respectively.

The record does not disclose whether the actual quantities of material applied were as great in 1921 as in previous years. It does not appear that, taking the country as a whole, such applications in 1921 compare unfavorably with those of 1920, or of the test period. Returns from carriers representing more than half of the tie and rail applications for 1920, indicate that their 1921 applications are within 1 per cent of those of 1920, the East and South being greater than in 1920, and the West being less. Maintenance expenses are made necessary by two factors, the action of the elements and the movement of traffic. In a year in which the movement of traffic is light, somewhat less maintenance is required than in years of heavy traffic, although it would be in the public interest if surplus from prosperous years were expended on maintenance in years of light traffic.

Statistics are available regarding the condition of locomotive equipment. They indicate that in the aggregate locomotives were in substantially the same condition at the end of the year as at its beginning. The percentages of unserviceable locomotives as reported to us do not agree exactly with those reported to the American Railway Association, on account of differences in method, but they are not far apart. According to the reports to us, 24.5 per cent of the locomotives were held for repairs more than 24 hours in January, 1921, as against 23.5 per cent in January, 1922. The corresponding figures from the reports of the American Railway Association are 18.2 for January, 1921, and 19.8 for January, 1922. The view that locomotives needed to handle the traffic of 1921 were well maintained is not inconsistent with what appears to be the fact, that a not inconsiderable amount of deferred maintenance in locomotives exists which should be made up in anticipation of a greater volume of traffic.

The statistics of the number of bad-order cars are less satisfactory. On their face they indicate that deterioration of freight cars pro-

ceeded at an alarming rate during 1921. According to reports of carriers to us, the percentage of freight cars unserviceable was 8.8 in January, 1921, and 13.6 in January, 1922, but at the same time there was an increase in the percentage of home cars on home roads from 51.7 to 71.2. It is admitted by carriers that the reported percentages of bad-order cars are not comparable because of the different methods or standards employed by carriers reporting foreign cars on their lines and cars on home lines. The figures by months from January 1, 1920, to January 1, 1922, follow:

	Freight cars un- serviceable.	Home cars on home lines.		Freight cars un- serviceable.	Home cars on home lines.
1920.	<i>Per cent.</i>	<i>Per cent.</i>	1921.	<i>Per cent.</i>	<i>Per cent.</i>
January.....	6.5	21.7	January.....	8.8	51.7
February.....	6.5	21.5	February.....	9.8	61.3
March.....	6.9	22.3	March.....	10.8	66.0
April.....	6.5	24.3	April.....	12.3	63.8
May.....	6.6	24.7	May.....	13.6	69.5
June.....	7.1	24.5	June.....	14.5	69.8
July.....	7.2	25.0	July.....	15.4	70.1
August.....	7.2	25.8	August.....	15.4	68.1
September.....	7.2	27.7	September.....	15.5	68.5
October.....	7.2	29.3	October.....	14.8	62.1
November.....	7.5	31.8	November.....	13.8	62.0
December.....	7.9	39.2	December.....	13.0	69.1
			1922.		
			January.....	13.6	71.2

There is obviously a relationship between the number of cars reported as unserviceable and the number reported as on home roads. Under the policy adopted by the director general, home routing of empty cars was not adhered to. As traffic declined late in 1920 and early in 1921, the cars not needed were returned as rapidly as possible to their owners. Non-owning lines made only running repairs and kept cars moving under load, with the result that they were not included in bad-order reports, and when the cars were returned to home lines the extent of the bad-order situation was reported. It is true that between certain months in 1921 there was an increase in bad-order cars along with a decline in percentage of cars on home lines, but the figures as a whole do not show that the cars used in handling the traffic of 1921 were not fairly maintained. It is not necessary for us to determine in this connection to what extent deferred maintenance inherited from 1920 and prior years exists.

When we consider the conditions which prevailed during 1921, the carriers' contention that current maintenance was deferred may have basis, but they have not supported their contention with such facts of record as would warrant us in making a definite finding of the extent to which it was deferred. Carriers could not and did not escape the compelling influences which affected other forms of industry during that lean year. The number of their employees was reduced by a fifth, sometimes more; outgo was pared and upkeep

skimped where possible; the "bad-order" figures cover an increasing number of cars requiring heavy repairs, as well as the obsolete and obsolescent, which were not being replaced to the requisite extent; and, in brief, we are left with the abiding, if composite, impression that, on the whole, the railway plant of the country was not at the end of 1921, and is not now, in as good condition as it should be, and is far from ready to meet the demands which will come with resumption of general business activity. There are, of course, some notable exceptions.

We are of opinion that if the return of 3.31 per cent for Class I roads for the year 1921 were corrected, such corrected return would not vary so materially from 3.31 per cent as to make unsafe or unreliable the adoption of that figure as approximating the result of actual operation in 1921.

CONSTRUCTIVE YEAR.

Rapidly changing conditions since August, 1920, make the actual results of operation and the percentage earned of little value as a guide for the future, unless viewed in the light of present and prospective conditions. The carriers in response to our request introduced statements indicating what the results of the operations of Class I roads would be for a constructive year, based upon the traffic of 1921, under rates and costs prevailing in February, 1922. The statements reflect net railway operating income of \$443,609,800, or a yield of 5.06 per cent on a valuation of \$8,775,000,000 for the eastern group; \$95,350,869, or a yield of 4.25 per cent on a valuation of \$2,243,499,045 for the southern group; \$368,732,961, or a yield of 4.49 per cent on a valuation of \$8,206,000,000 for the western district; and \$907,693,630, or a yield of 4.72 per cent upon a total of \$19,224,499,045 for Class I carriers in the United States as a whole. The valuation used is that taken by us in *Increased Rates, 1920, supra*, for all railroads, as adjusted by them in their estimates to cover Class I roads, with additions and betterments of \$330,000,000 to September 30, 1921, for the eastern group; \$116,449,045 to the same date for the southern group; and \$332,000,000 to December 31, 1920, for the western district, a total of \$778,449,045.

During 1915 and 1916 net railway operating income of Class I roads constituted the following percentage proportions of that for all "carriers," as defined in section 15a (1), hereinafter referred to as all carriers: Eastern group, 98.39; southern group, 97.68; western district, 98.36. Upon the basis of these percentages for Class I carriers, the net railway operating income of all carriers for the constructive year, with certain guaranty period adjustments eliminated, would be \$448,776,952 for the eastern group, \$92,328,072 for the southern

group, \$382,678,316 for the western district, and \$923,783,340 for the United States. Predicated upon these figures, the percentage rates of return for the constructive year would be 5.23 in the eastern group, 4.16 in the southern group, 4.72 in the western district, and 4.89 in the United States as a whole, on the valuation taken by us in *Increased Rates, 1920, supra*, modified by the transfer from the eastern to the southern group of \$220,000,000 representing the Illinois Central north of Cairo. With due allowance made for the net changes in the carriers' properties in 1920, the rate of return for the carriers as a whole would approximate 4.7 per cent.

The results of the constructive year for Class I carriers as determined by them were obtained by adjusting the 1921 figures for freight revenue, operating expenses, and railway tax accruals in accordance with certain estimates determined separately for the eastern group, the southern group, and the western district. The effect of these adjustments for Class I carriers upon the actual results of operation in 1921 is set out hereunder:

Item.	Eastern group.		Southern group.	
	Additions to income.	Deductions from income.	Additions to income.	Deductions from income.
Freight revenue:				
Rate changes.....		\$53,000,000		\$15,200,000
Guaranty-period adjustments.....			\$200,882	
Operating expenses:				
Labor—				
Wage changes.....	\$78,436,068		21,990,000	
Changes in rules and working conditions	13,448,843		3,457,000	
Fuel—				
Coal.....	45,020,243		7,708,000	
Oil.....			230,000	
Material and supplies.....	95,416,626		26,267,000	
Miscellaneous.....	18,276,284		5,188,479	
Guaranty-period adjustments.....				5,515,406
Railway tax accruals.....		25,000,000		6,060,000
Net additions to income.....	172,597,504		38,355,865	

Item.	Western district.		United States.	
	Additions to income.	Deductions from income.	Additions to income.	Deductions from income.
Freight revenue:				
Rate changes.....		\$76,500,000		\$144,700,000
Guaranty-period adjustments.....	\$2,375,806		\$2,675,688	
Operating expenses:				
Labor—				
Wage changes.....	64,237,872		164,663,940	
Changes in rules and working conditions	10,275,511		27,180,854	
Fuel—				
Coal.....	17,750,000		70,478,243	
Oil.....	21,875,000		22,105,000	
Material and supplies.....	63,200,000		184,883,626	
Miscellaneous.....	8,767,986		32,232,749	
Guaranty-period adjustment.....		4,358,183		9,873,679
Railway tax accruals.....		25,694,322		56,763,322
Net additions to income.....	81,929,670		292,883,099	

The estimates upon which the constructive year is based were criticized. The carriers estimated what the reductions in freight revenue would have been if rate changes made since January 1, 1921, had been in force during all of that year. Thus estimated, the reductions constitute the following proportions of the freight revenue for 1921: Eastern group, 2.8 per cent; southern group, 3.1 per cent; western district, 4.9 per cent. In the southern group carriers obtained the data by telegraph. In the eastern group and western district the amounts were based upon estimates of traffic witnesses. In some respects the data submitted by carriers in response to our request do not accord with these estimates. Witnesses for the carriers in the southern group stated that recent rate changes there were more in the nature of general adjustments, involving both increases and decreases than general reductions, such as those effected in the East and West. In view of these facts representatives of southern shippers contend that the estimate in that group is overstated. Quite apart from the infirmities which attach to a constructive year, the circumstances under which the estimates were made by the carriers impair their probative value.

The estimated reductions in labor costs are intended to cover decreases in rates of pay made by the Railroad Labor Board on July 1, 1921, and changes in rules and working conditions ordered by that body to become effective on January 1, 1922, and subsequently. The carriers in the eastern group determined the percentage of reduction by comparing the actual pay rolls for the first two weeks of January, 1922, with the same pay rolls increased to the basis in force prior to July 1, 1921. This study developed decreases of 11.2 per cent due to wage reductions and 1.1 per cent due to changes in rules and working conditions. In preparing the constructive year the eastern carriers reduced the pay for labor in the first half of 1921 by 11.2 per cent for wage changes and in the whole of 1921 by 1 per cent for changes in rules and working conditions. The southern and western carriers used 11.5 per cent for wage reductions and 1 per cent for changes in rules and working conditions, applied in the same manner.

The total adjustment on account of changes in rules and working conditions aggregated \$27,180,854, of which \$13,448,343 covered the eastern group; \$3,457,000 the southern group; and \$10,275,511 the western district. Certain shippers assert that these figures are understated but do not show the extent of the discrepancy. It was developed that the carriers' estimates do not cover changes ordered by the Railroad Labor Board since January 1, 1922, including those affecting stationary engineers and telegraphers.

The bases of estimated reductions in fuel costs vary in the three groups. In the eastern group the saving in coal cost is based upon the application to the total consumption of 63,408,793 tons in 1921 of the difference between the average price of \$4.17 per ton, including freight and handling costs, at which coal was charged out during 1921, and \$3.46 per ton, the estimated charge-out price for January, 1922, including freight and handling costs. In the southern group it is based upon the application to the total consumption of 18,800,000 tons in 1921 of the difference between the average price of \$3.95 per ton, including freight and handling costs, at which coal was charged out during 1921, and \$3.54 per ton, the estimated charge-out price for December, 1921, including freight and handling costs. In the western district it is based upon the application to the consumption of 45,000,000 tons in 1921 of the difference between \$4.08 per ton, the average purchase price for 1921, including cost of freight but not of handling, and \$3.73 per ton, the average purchase price in October, 1921, computed in like manner.

Shippers directed our attention to the low prices of spot coal prevailing at the time of the hearing. They urged that on April 1, 1922, when existing coal contracts would expire, carriers would be in position to negotiate purchases at greatly reduced prices, and contended that the carriers' estimates were too high to be used by us in forecasting future operating expenses. The average mine price of bituminous coal received by 532 operating companies declined from \$3.52 per ton in January, 1921, to \$2.73 per ton in October of the same year. The average spot mine price of bituminous coal, as reported by Coal Age, fell steadily during January and February, 1922. For the week ended January 2 it was \$2.32 and for the week ended February 27, \$2.18.

In recent months many railroads have stored large quantities of coal bought at spot prices ranging from \$1.75 to \$2.10 per ton. Their charge-out prices for future months will be lowered by the effect of recent purchases at spot prices. A witness for the national association of coal operators testified that under prices prevailing during the period April 1 to October 1, 1921, the bituminous-coal industry generally operated at a loss; and, while confident that lower mine wages would be established during the ensuing coal year, said that the coal industry would not agree to make railroad coal contracts at spot prices then prevailing or upon the basis of anticipated reductions in mine labor costs.

During October, 1921, the eastern carriers paid an average of \$2.75 per ton for coal at the mine. Their estimate for the constructive year is 15 cents less per ton. The estimate of the southern carriers for the constructive year is \$3.54 per ton, which includes

freight and handling charges. This is 8 cents per ton in excess of the estimate of the eastern carriers, although statistics submitted by the carriers indicate that usually mine prices of coal are lower in the South than in the East. This difference is occasioned in part by the fact that the estimates of the southern carriers are based upon December, 1921, prices, and those of the eastern carriers upon January, 1922, prices. The estimate of the southern carriers is only 4 cents per ton less than the charge-out price for October, 1921, which undoubtedly included coal purchased at higher prices than those prevailing in that month. The cost of coal to the southern carriers in October, 1921, including freight charges, was \$3.36 per ton, and the average handling cost during the 12 months ended September 30, 1921, was 15 cents per ton, which is now lower owing to wage reductions already made. On the basis of prices paid in October, 1921, the charge-out price per ton would be about \$3.49, as compared with the estimate of \$3.54 used in the constructive year. The estimate of the eastern group, if not low, undoubtedly is conservative. Measured by that estimate, the prices used by the southern and western lines appear high. The estimates of the carriers, excluding freight and handling charges, are higher than the average spot coal price of \$2.18 in the week ended February 27, 1922, by the following amounts: Eastern group 42 cents; southern group 63 cents; western district \$1.22.

The eastern carriers consumed 22,438,371 gallons of fuel oil during the 12 months ended September 30, 1921. Their average charge-out price during this period was 7.2 cents per gallon. These carriers did not estimate what saving would have been effected at prices of oil prevailing at the time of the hearing. The estimates of the southern group and western district are 3.54 cents and 3.25 cents per gallon, respectively. The estimate of the southern carriers is but 0.6 mill lower than the average purchase price per gallon for October, 1921; and it is 0.4 mill in excess of the average charge-out price per gallon for 1920. The estimate of the western carriers is 1.5 mills higher per gallon than the purchase price of fuel oil for the western district for October, 1921. The charge-out price in October, 1921, was 3.3 cents per gallon, which is but 0.5 mill more per gallon than the estimated price. There is evidence which tends to show that, on the average, delivered prices of oil were, at the time of the hearing, considerably below the estimates of carriers in the southern group and western district.

Coal, next to labor, is the largest single item of expense to the railroads. If, as seems fairly inferable from the record, the average mine price per ton for railroad coal during the constructive year be taken at not to exceed \$2.50 for the eastern group, \$2.40 for the

southern group, and \$2.75 for the western district, the coal bill of the railroads as recast by them in the constructive year would be reduced by approximately \$6,340,000 in the eastern group, \$7,300,000 in the southern group, and \$29,250,000 in the western district. If the fuel-oil price should not exceed 2.75 cents per gallon, further reductions of \$145,000 in the eastern group, \$350,000 in the southern group, and \$8,750,000 in the western district would be possible.

The decrease of 20 per cent estimated by the carriers in prices of material and supplies is based upon the decline in charge-out index prices of the Baltimore & Ohio, New York Central, and Pennsylvania Railroads. On January 1, 1921, this index price was 208 per cent of the average index price of the same roads for the test period. On July 1, 1921, it was 158, on October 1, 1921, 160, and on November 1, 1921, 149. The average index for the period July 1 to December 1, 1921, was determined to be 156 on the basis of a composite average of the index figures of July 1, October 1, and November 1. By averaging 208, the index at the beginning of the year, and 156, the average index for the last six months, the carriers fixed the index for 1921 at 182 as compared with 100 during the test period. They estimated the index for January 1, 1922, to be 149, which was the index of November 1, 1921; they estimated the index on February 1, 1922, to be 137; they considered that the average of these two 1922 index figures, or 143, would represent the fair prevailing price index of material and supplies, as compared with the test period. This figure is 21.4 per cent under 182, the average index determined for 1921, and the carriers deduce therefrom that the average prevailing price of material and supplies was 20 per cent below that of 1921.

Carriers purchase or contract for material and supplies many months before using them. Because of the large stocks of materials purchased at high prices and carried over into 1922, the effect of reduced material prices will not be reflected fully in charge-out prices for many months. The estimates of carriers are based solely upon charge-out prices, rather than purchase prices. While the index of 137 for February, 1922, if accurate, undoubtedly exceeds the average index of purchase prices prevailing at the time of the hearing, it more nearly approximates that index than the composite figure used by the carriers. If 137 had been used in the calculations of the carriers for the constructive year, the reduction in the price of material and supplies would have been 25 per cent instead of 20 per cent. If 25 per cent had been used the operating expenses of the carriers would have been further reduced for the constructive year by \$23,800,000 in the eastern group, \$6,500,000 in the southern group, and \$15,800,000 in the western district, a total of \$46,100,000.

Miscellaneous charges to operating expenses were decreased in accordance with the composite percentages upon the basis of which labor, fuel, and material and supplies were reduced. The reductions so determined were 11.14 per cent in the eastern group, 10.99 per cent in the southern group, and 10.1 per cent in the western district. This estimate is wholly arbitrary as applied to different items which would be influenced by varying factors. Nevertheless it is accepted as the best which the carriers were able to submit in the limited time afforded.

On January 1, 1922, the Federal income tax rate applicable to all corporations, including carriers, was increased from 10 to 12.5 per cent. In computing the constructive year the carriers have deducted the following amounts to cover the increase in income taxes due both to the increase in Federal tax rate and the increase in income: Eastern group, \$25,000,000; southern group, \$6,069,000; western district, \$25,694,332; total, \$56,763,332. These estimates are in addition to the amount of income taxes actually accrued during 1921 and deducted from net revenue from railway operations in the determination of \$614,810,531, the actual net railway operating income for that year. The amount of this accrual in 1921 is not before us, but is probably in excess of \$30,000,000. The amounts of Federal taxes accrued by all Class I carriers and lessor companies in recent years are as follows: 1917, \$57,957,420; 1918, \$53,507,951; 1919, \$41,742,113; 1920, \$50,542,597. It appears from a comparison of the net railway operating income of 1918, 1919, and 1920 with the net railway operating income as estimated by the carriers for the constructive year, that the income tax applicable to the latter would not greatly exceed that actually accrued in 1918, 1919, or 1920. In the eastern group the increase due to increase in tax rate was obtained by applying 2.5 per cent to the net railway operating income for 1921 instead of to the net taxable income, which was considerably less. The increase due to increase in income was obtained by applying 12.5 per cent to the aggregate additional income of the constructive year. If this calculation had been made by individual carriers, the estimate would have been substantially less.

On January 1, 1922, coincident with the increase in the carriers' income-tax rate, the transportation tax of 3 per cent on freight was repealed. Carriers annually pay considerable sums as freight charges to other carriers upon their material and supplies, and, to the extent that transportation taxes accrued thereon, carriers' expenses will be less in 1922 than in 1921.

Passing from the constructive year to the prospects for the immediate future, the carriers estimate that the revenue tonnage for 1922

will not exceed that of 1921. In support of this position they assert that in the Middle West the winter wheat crop of 1922 will be less than that of 1921; that there is prospect of a considerable decline in the California citrus crop due to damage by frost; and that in the South the acreage of cotton has been reduced by various factors. We are not ready to accept February crop estimates as accurate, but, even if their forecasts of these three crops are realized, this is far from conclusive that the aggregate tonnage of agricultural products will be decreased. Yields of various crops vary from year to year. Some are good and others are poor, and large yields of other crops may more than offset any deficiency in these three. Moreover, facts of record indicate that in the South cotton growing is being supplanted to some extent by diversified farming.

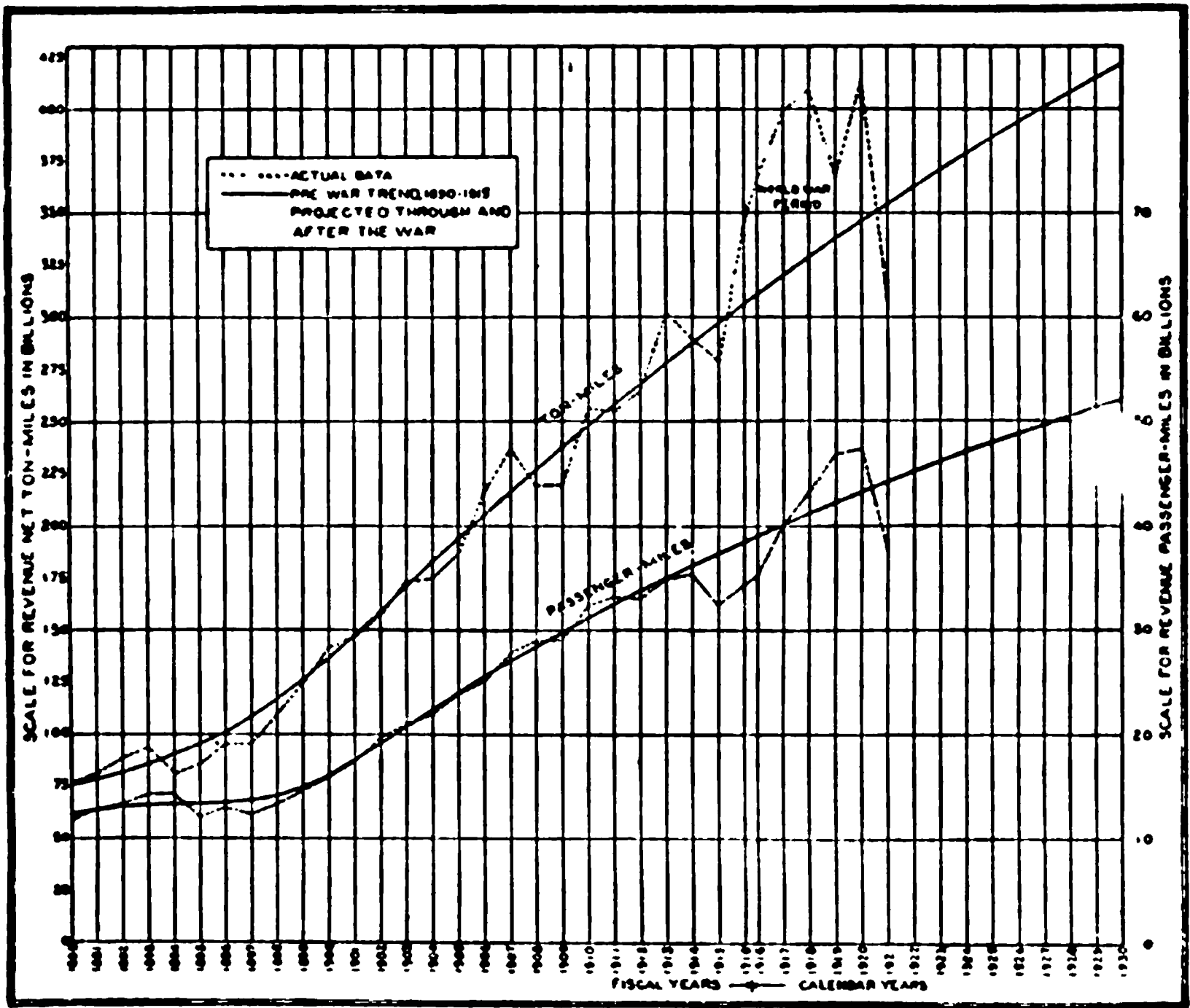
The carriers asserted that there was no evidence of a revival of business sufficient to warrant a prediction of increased traffic in the near future. Since the second week in January the number of cars of revenue freight loaded had been steadily increasing, but this the carriers in part discounted on the ground that the increased car loadings were caused largely by emergency shipments of coal designed to guard against the contingency of a strike in the coal fields on April 1. The strike has occurred and still continues; and the revenue freight loaded has somewhat decreased.

The chart on the opposite page shows the net revenue ton-miles and passenger-miles from 1890 to 1921, inclusive, and the trend for each of these items, from 1890 to 1915, as projected through the succeeding years to 1930.

Taking the charted trend as normal, freight traffic for 1921 was subnormal. Revenue ton-miles for that year aggregated 306,755,332,000 for Class I carriers, or about 309,500,000,000 for all carriers. The trend of tonnage, 1890-1915, if projected through 1922, will aggregate 362,557,000,000 revenue ton-miles for that year. To equal that ton-mileage in 1922 would require an increase over 1921 of about 17 per cent, and to equal the ton-mileage of 1920 would require an increase of over one-third. The first three months of 1922, as evidenced by the operations of Class I carriers, show a definite upward trend compared with the corresponding period of the preceding year. Revenue car loadings in January, 1922, were only 3.3 per cent over those of January, 1921, but net railway operating income aggregated \$29,476,422, as compared with a deficit of \$958,399 in January, 1921.

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Revenue car loadings for February, 1922, were 12.1 per cent in excess of those of February, 1921, and net railway operating income was \$47,770,897, as compared with a deficit of \$7,398,307 in February, 1921. In March, 1922, revenue car loadings exceeded those of March, 1921, by 19.9 per cent. Undoubtedly, anticipation of a general coal strike influenced March loadings, but the upward trend of traffic is apparent notwithstanding this fact. We feel justified in accepting increased revenue car loadings as foreshadowing an increased vol-



Revenue net ton-miles and revenue passenger-miles of steam roads in the United States, 1890-1921.

ume of freight traffic. The effect of the coal strike, which began April 1, can not be forecast. It may affect traffic other than coal and coke. The increase in loading for all freight traffic during the first three months of 1922 was 11.9 per cent over that of 1921. The subjoined table indicates by months and in the aggregate the increase in loadings of cars of revenue freight other than coal and coke for the first three months of 1922 compared with the same period of 1921:

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	Grain and grain products.	Live stock.	Forest products.	Ore.	Merchan- dise and l. c. l.	Miscel- laneous.	Total of six items designated.
January, 1922.....	210,244	135,706	203,996	18,386	875,296	881,889	2,325,517
January, 1921.....	178,707	140,720	198,635	86,717	752,917	880,341	2,188,637
Increase.....	31,537	¹ 5,014	5,361	¹ 18,351	122,379	1,548	137,480
Increase.....per cent..	17.6	¹ 3.6	2.7	¹ 49.9	16.3	0.2	6.3
February, 1922.....	204,794	116,448	200,496	16,606	863,973	880,600	2,282,917
February, 1921.....	151,161	113,564	208,968	31,569	761,662	847,062	2,113,966
Increase.....	53,633	2,884	¹ 8,472	¹ 14,963	102,311	33,538	168,931
Increase.....per cent..	35.5	2.5	¹ 4.1	¹ 47.4	13.4	4.0	8.0
March, 1922.....	185,331	123,108	237,321	23,642	1,068,782	1,159,883	2,798,067
March, 1921.....	163,031	117,248	222,057	28,919	944,488	1,033,822	2,509,565
Increase.....	22,300	5,860	15,264	¹ 6,277	124,294	126,061	288,502
Increase.....per cent..	13.7	5.0	6.9	¹ 18.5	13.2	12.2	11.6
First three months, 1922..	600,369	375,262	641,813	58,634	2,808,051	2,922,372	7,406,501
First three months, 1921..	492,899	371,532	629,660	97,205	2,459,067	2,761,225	6,811,588
Increase.....	107,470	3,730	12,153	¹ 38,671	348,984	161,147	594,913
Increase.....per cent..	21.8	1.0	1.9	¹ 39.7	14.2	5.8	8.7

¹ Decrease.

These figures indicate that the increase in revenue car loading during the first three months of 1922 was general, and not confined to coal and coke. It appears reasonably certain that, with increased traffic and lowered operating expenses, the net railway operating income of the carriers in 1922 would be more favorable, under present rates, than in 1921.

FREIGHT RATES AND CHARGES.

In *Increased Rates, 1920, supra*, we permitted percentage increases in the charges for freight service, including switching and special services, as follows: In the eastern group, 40 per cent; in the western group, 35 per cent; in the southern and mountain-Pacific groups, 25 per cent; and upon interterritorial traffic 33½ per cent. In *Authority to Increase Rates, supra*, the 40 per cent increase was authorized within Illinois territory as there defined and between that territory and the eastern group, and a 35 per cent increase between that territory and the western group. The average revenue per ton-mile in 1921 was greater than that for the fiscal year ended June 30, 1914, by the following percentages: Eastern district, 96.1; southern district, 61.4; western district, 59.3; and United States as a whole, 76.2. In 1914 the average-distance haul per revenue ton per road was 155 miles and in 1921, 187 miles.

One important subject of inquiry is the extent to which readjustments have been made and their effect upon the rate level. In giving

our approval to the rates authorized in *Increased Rates, 1920, supra*, we said at page 256:

The rates to be established * * * must necessarily be subject to such readjustments as the facts may warrant. It is conceded by the carriers that readjustments will be necessary. It is expected that shippers will take these matters up in the first instance with the carriers, and the latter will be expected to deal promptly and effectively therewith, to the end that necessary readjustments may be made in as many instances as practicable without appeal to us.

General reductions ranging from 10 to 22 per cent ordered by us with respect to carload rates on grain, grain products, and hay in the western and mountain-Pacific groups became effective during January, 1922, and upon our recommendation rates on live stock in the same groups in excess of 50 cents per 100 pounds had been reduced 20 per cent, but not below 50 cents, in October, 1921. Practically all other carload rates upon products of the farm, garden, orchard, and ranch throughout the country were reduced 10 per cent in January, 1922. All of these reduced rates, other than those on grain, grain products, and hay in the western and mountain-Pacific groups, expire by tariff limitation on June 30, 1922. Only in these three instances have reductions been made covering the entire country, or the whole of any one or more rate groups, since the increases of 1920 became effective.

Many rate readjustments, resulting in reductions, have been made since the increases of 1920. Some affected a substantial volume of traffic such as export grain, bituminous coal to Lake Erie ports for the Northwest, sand and gravel in eastern territory, ore, lumber, and petroleum and its products. In some instances the volume of traffic after the reduction was less and in others more than before the reductions. Protests, usually alleging undue prejudice, have been filed by shippers against many of these readjustments, and in some cases have resulted in suspension proceedings. Some readjustments have been made hastily under pressure from particular shippers, or for the purpose of retaining traffic or deflecting it from one group of carriers to another.

In their constructive year, which is based on 1921 tonnage, the carriers estimated the net effect of the reductions in the revenue of Class I roads at \$186,700,000, distributed as follows: Eastern group, \$75,000,000;¹ southern group, \$15,200,000;² western district, \$96,500,000.³ These estimates represent but 4.7 per cent of \$3,963,900,000,

¹ During the December hearings, a traffic witness estimated that, based on the traffic of a normal year, rate reductions after August 26, 1920, would aggregate \$100,000,000 in official classification territory; during the January hearings the same witness gave detailed figures estimating the effect of reductions in the same territory at \$101,145,000; in their constructive year, placed in evidence in March, Class I carriers of the eastern group estimated that rate reductions since September, 1920, would amount to 4 per cent of the freight revenue, or, in round figures, \$75,000,000, for 1921.

Footnotes 2 and 3 on p. 704.

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the freight revenue for 1921, as adjusted by carriers to cover rate reductions made prior to January 1, 1922. The total amount paid by shippers and passengers for transportation has also been reduced by the amount of the transportation taxes, repealed January 1, 1922, which in 1921 aggregated approximately \$186,000,000.

The positions of shippers and representatives of the public in this proceeding are diverse. Many urge immediate radical reductions, contending that rates in the aggregate or on particular commodities are unreasonable; that the increases of 1920 contributed to the depression which followed by a few months the date of their establishment; that notwithstanding some readjustments and reductions subsequently made, the existing rate level is preventing a revival of commerce, and, by diminishing the flow of traffic, defeats the desired end of producing adequate net return for the carriers. Others urge that rates be reduced as soon as possible, but express no opinion as to whether reductions should now be made. Most of the general commercial and shippers' organizations urge that reductions when made should apply generally to all rates, as did the increases of 1918 and 1920, but no shipper or shippers' organization urged reductions in fares as well as in rates. Numerous State commissions in the West and South contend that reductions should be made both in rates and in fares. The representatives of certain industries and of a few general organizations urge that reductions be applied only to basic commodities, the staples which are recognized as most important to the economic situation of the country, and which usually constitute low-grade freight.

The carriers are unanimous in the opinion that increased rates have not caused the business depression, which they attribute to generally recognized world-wide readjustments resulting in unfavorable trade and credit conditions, restricted purchasing power, contraction of consumption, and, in many instances, collapse of demand. The carriers contend that the increased rates were not even an important contributing factor in the lessening of traffic in 1921, and that reduction in rates will not restore normal traffic. They do not, however, advocate rate increases as a means to increase net revenue. They admit that rates are too high and must come down, but they insist that rates can not be further reduced until the costs of transportation are further reduced.

* During the December hearings, a traffic witness estimated that the reduction of 10 per cent in rates on products of the farm, garden, orchard, and ranch would aggregate \$6,000,000 to southern carriers during the six months period January-June, 1922; in their constructive year, placed in evidence in March, Class I carriers of the southern group estimated that all rate reductions since January 1, 1921, would amount to \$45,200,000 for 1921.

* During the December hearings, a traffic witness estimated that, upon the basis of the tonnage for the 12-month period ended September 30, 1921, rate reductions since August 26, 1920, would aggregate \$96,500,000.

Rates generally have been increased twice in the past four years, the increase of 1920 alone having been intended to produce more than one billion dollars additional revenue from the transportation of freight. As wages and cost of materials have been materially reduced since the increases of 1920, it is the position of shippers generally that the inability of the carriers to earn a fair return since these reductions were made is due largely to the failure of traffic to move in normal volume, and that the most important problem before us is to devise rates that will move more traffic and at the same time be compensatory to the carriers. It is generally recognized that existing high rates are a burden upon commerce, and many shippers insist that they are forcing movement to other forms of transportation, tend to restrict traffic, and in some instances to prevent particular movements. Many complaints are also made relative to the disturbance of relationships between producing or consuming districts due to the manner in which rates have been increased, and to partial readjustments which have subsequently taken place. The belief is general that traffic has been localized and the radius of distribution reduced. One representative witness testified that while his trade in territory within a radius of a hundred miles declined 16 per cent in 1921, as compared with 1920, the volume of his business in territory distant from 500 to 800 miles declined from 30 to 50 per cent.

Some shippers contend that the psychological effect upon industry of existing high transportation charges is as important as the effect in dollars and cents. Agitation of the freight-rate question has been continuous, and the shipping public, aware that transportation charges are still on a high level, is discounting price deflation and withholding purchases in the expectation of lower delivered costs. This has a substantial effect upon the volume of traffic and revenues of carriers. Rate stability is one of the important needs of commerce. It is a fundamental law of business that the anticipation of a falling market tends to restrict purchases. The public does not accept the present rate level as stable because of the belief that rates are too high and must come down.

In the year 1920 there culminated a period of extreme inflation which was followed by a period of depression. At the close of the hearings the depression had existed for approximately a year and one-half. Factors other than transportation charges have been showing a tendency to stabilize upon a level considerably below that of 1920 but higher than the pre-war level. Shippers urged that although rate reductions if made a year ago might not have stimulated traffic, there are reasons for believing that reductions, if made now, would hasten business recovery and result in increased tonnage.

Many shippers contend that such reductions as are made should apply upon traffic generally rather than upon specific commodities. The rate increases of 1918 and 1920 affected all commodities. These shippers say that prior to the general increases the differences between carload rates on low-grade basic commodities and rates on other commodities were as great as were justified by conditions then existing. Those differences have been widened by the percentage method of increasing rates, presumably in accord with changed conditions. The volume of traffic in the various commodities handled by different carriers is far from uniform. For example, the percentage of coal tonnage to total tonnage ranges from 4 per cent on some lines to 85 per cent on others. These shippers urge that, in the absence of proof that rates on particular commodities are unlawful, reductions confined to particular commodities will result in unfair distribution of the transportation burden and deplete the revenues of one set of carriers for the benefit of others. They refer to the many practical difficulties encountered in any attempt to select particular commodities for a general reduction to the exclusion of others, and to the tariff confusion and new commodity rates which will result. One of the needs of commerce is the lessening of the spread in rates between commodities and localities created by the percentage increases of 1918 and 1920. This applies to commodities in general and not merely to basic commodities. Shippers say that carriers' revenues have been depleted in the aggregate by piecemeal reductions, but that the public generally does not recognize such changes as a general lowering of the rate level; that the restoration of confidence and stabilization of business can not be attained by such a process; and that any anticipation that reductions in freight rates will tend to increase confidence and a willingness to purchase can only be realized by reductions more general in extent than if limited to basic commodities.

Evidence was introduced concerning a wide range of commodities. Particular attention was directed to basic commodities, among which may be mentioned coal, iron and steel and the materials which enter into their manufacture, stone, sand and gravel, brick and clay products, cement, forest products, foodstuffs, other agricultural products, and live stock.

Shippers of basic commodities submitted the same general character of evidence relative to the necessity of rate reductions as other shippers, but advocated large reductions upon the basic commodities even though as a result no reductions may now be made upon other commodities. They urged that generally these commodities constitute low-grade freight which moves in any class of equipment, loads heavily, is subject to little loss or damage in transit, and consequently is desirable traffic for the carriers and entitled to the lowest rates.

They also urged that, since the existing rates were authorized, price declines on basic commodities had been more severe than on higher-grade commodities; that their industries as a whole were in a depressed condition; that in some cases the commodities were being sold at a loss; that many basic commodities are important raw materials used in manufacture; that rate reductions thereon will do much to reduce cost of production and to stimulate business; and that generally transportation charges thereon were and are out of proportion to the value of the property transported, and restrict production and movement.

Particular stress was laid upon the rates on commodities used in the construction of buildings, bridges, and roads. Shippers of road materials pointed to the need of many miles of improved highways and urged that road construction should be undertaken on a large scale during times of depression and unemployment. Building construction needs for the present year are greater than those incident to years in the period immediately preceding the war. Not only has the population of the country increased, but during the war building and other construction, except for war purposes, was largely suspended and the shortage then created has not yet been supplied. This is particularly true of dwellings, the shortage in which is reflected in the high rents prevalent for living apartments and dwelling houses. The President's conference on unemployment in its report of September 29, 1921, said: "We are short more than a million homes; all kinds of building and construction are far behind national necessity." A representative of building-material manufacturers and building contractors presented evidence to the effect that lowered building costs must be brought about if the housing shortage is to be overcome; and that prices of material and labor in the construction industry have fallen much below the peak, whereas freight charges on building materials generally have not been reduced. Figures presented by him indicate that, using 1913 as 100, the index of building-material prices reached 310 during 1920 and had receded in December, 1921, to 163.2; and that, although no general statistics on building labor are available, the December labor index, again using the year 1913 as 100, was probably not far from that on building material, 163.2, which represents reduction from a peak of somewhere between 300 and 400 in 1920. The figure 163.2 has not been reconciled with that of 203 published by the United States Bureau of Labor Statistics. The efficiency of labor appears also to have greatly increased since war years. Shippers of building materials further urged that the increases in freight charges as made affected heavy low-priced construction materials far more than commodities of

higher value, upon which the percentage of freight charge to value was comparatively small; that the heavier construction materials, considered as a group, are important money-earning freight for the railroads, and that revival in the construction industry will do much to build up the earnings of the carriers. These shippers, as men experienced in business, expressed their conviction that sound public policy demands a reduction of rates of transportation on basic commodities which will tend to encourage production, create employment, and reduce the general level of the cost of living. They emphasized the contention that the public welfare requires that these indispensable commodities be moved as cheaply as possible.

According to figures published by the United States Bureau of Labor Statistics, the relative prices of principal commodity groups in December, 1921, compared with average prices in 1913 taken as 100, were as follows: Farm products, 113; food, 139; cloth and clothing, 185; fuel and lighting, 187; metals and metal products, 119; lumber and building materials, 203; chemicals and drugs, 161; house-furnishing goods, 218; miscellaneous, 148; all commodities, 149. The price index for February, 1922, all commodities, is 151. If the average freight revenue per ton-mile for the year ended June 30, 1913, Class I roads, be taken as 100, the relative figure for freight charges in December, 1921, was 172. It is evident that price deflation has taken place on most commodities but has been far from uniform.

The following table reflects the wholesale index prices, all commodities, compared with the ton-mile revenue for Class I roads by years for 1916, 1917, 1918, and 1919, and by months for 1920, 1921, and January and February, 1922. Relative figures for 1913 are taken as 100, the calendar year being used for prices and the year ended June 30, 1913, for revenue:

Period.	Wholesale prices.	Average revenue per ton-mile.	Period.	Wholesale prices.	Average revenue per ton-mile.
Year ended Dec. 31—			November, 1920.....	207	175
1916.....	124	98	December, 1920.....	189	169
1917.....	173	99	January, 1921.....	177	169
1918.....	196	118	February, 1921.....	167	174
1919.....	212	135	March, 1921.....	162	182
1920.....	243	146	April, 1921.....	154	186
1921.....	153	177	May, 1921.....	151	174
January, 1920.....	248	135	June, 1921.....	148	178
February, 1920.....	249	137	July, 1921.....	148	174
March, 1920.....	253	137	August, 1921.....	152	179
April, 1920.....	265	136	September, 1921.....	152	179
May, 1920.....	272	133	October, 1921.....	150	175
June, 1920.....	269	135	November, 1921.....	149	179
July, 1920.....	262	134	December, 1921.....	149	172
August, 1920.....	250	130	January, 1922.....	148	162
September, 1920.....	242	161	February, 1922.....	151	169
October, 1920.....	225	171			

Although our announcement with respect to the scope of this proceeding stated that relationships between particular points under existing rates were not in issue, some evidence was introduced concerning particular rate situations and relationships. The record is inadequate as to most of these special situations and no finding will be made regarding them. In some, suggestions as to needed readjustments are hereinafter made.

Numerous shippers in various lines of business sought reductions in rates on commodities manufactured or handled by them. Most of these shippers contended that their commodities are basic and accordingly entitled to first consideration; or that, if any reductions are to be made, such reductions should apply upon their commodities quite as much as upon commodities generally characterized as basic. Some shippers stressed the relatively high level of class rates, and pointed to increases therein as well as in classification ratings of many articles, in addition to general increases. They stated that the net result of the various changes has been to widen unduly the differences between carload and less-than-carload rates, and urged that to widen further these differences by reducing carload commodity rates and not class rates would have a serious effect. Some of the miscellaneous commodities move generally on class rates, others on commodity rates. Commodities which move on class rates in some territories move on commodity rates in others. The wide range of evidence presented, the numerous and diverse interests concerned, and the competitive relationship of many commodities, accentuate the difficulty of selecting individual commodities for specific reductions.

COAL AND COKE.

The annual production of bituminous coal during the five-year period ended with 1920 averaged approximately 530 million tons. Unlike the production of anthracite coal, which is more or less stable, the production of bituminous coal is greater or less according to industrial activity. Approximately 40 per cent is used by industries, 28 per cent by railroads, and the remainder for domestic and miscellaneous purposes.

Shippers who oppose a horizontal reduction and favor reductions on basic commodities with few exceptions select coal as one of the commodities upon which reductions should be applied if any are made.

To illustrate the importance of coal freight charges in determining production costs of other commodities, coal operators selected clay products, lime, cement, artificial heating and illuminating gas, manufactured ice, iron and steel articles, and glass. They testified that

power and fuel costs entering into the manufacture of these commodities range from 10 to 28 per cent of the total production cost. Transportation costs probably do not average more than half of the total delivered fuel cost, from which it would appear that, for example, a reduction of 15 per cent in coal rates would not reduce production costs of the selected commodities by more than from 0.75 per cent to 2 per cent. Data introduced by coal operators indicate that the average mine price of coal declined from approximately \$3.77 per ton in June, 1920, to \$2.56 per ton in December, 1921. Spot prices in February, 1922, were in the vicinity of \$2.20 per ton. The average annual mine price in the years 1904 to 1915 appears to have ranged from \$1.06 to \$1.18. It is stated that at the end of the year 1921 the average delivered price for spot coal for industrial use was approximately \$4.40 per ton, as compared with \$2.50 in 1916. Generally speaking, transportation charges on coal have not increased since 1915 in any greater ratio than mine prices, nor does it appear that on the average the ratio of transportation charges to mine prices was greater in February, 1922, than in the period 1904-1915.

In 1921 carriers used approximately 130 million tons of coal. Many do not obtain their fuel supply upon their own rails and pay transportation charges thereon to other carriers. Coal operators urged that the reduction in these charges would to a considerable extent offset any loss in revenue resulting from rate reductions on coal. A witness for the carriers testified that a 10 per cent reduction in coal rates in the eastern group, based upon 1921 tonnage, would result in loss in revenue approximately \$72,740,000, whereas the reduction in transportation charges paid by eastern carriers would be less than \$4,700,000. As previously stated, the ratio of coal traffic to other traffic on different roads varies materially, being in some cases 85 per cent and in others as low as 4 per cent of the total tonnage. It is evident, therefore, that loss in revenue from coal-rate reductions would affect some carriers greatly and others but little. Some of the less prosperous carriers are among those carrying a high proportion of coal.

Rates on coke are frequently related to rates on bituminous coal. Complaint has been made with respect to the existing relationship, but the record affords insufficient basis for conclusions as to what, if any, readjustment should be made.

Anthracite coal is produced in a restricted area and moves in much less volume than bituminous coal. Prices have not receded materially from the peak of 1920. The present rates represent a smaller percentage of the mine price than prior to 1915.

IRON, STEEL, AND ORE.

The iron and steel industry usually employs several hundred thousand men and produces a large tonnage for the carriers. The industry as a whole was highly prosperous in the years 1914-1920, and many companies were able during that period to pay large dividends and to accumulate substantial surplus funds. Beginning in the latter part of 1920 the industry encountered one of the most serious depressions in its history. By the end of 1921 many plants were closed and others were being operated at from 30 to 75 per cent of capacity. Prices had dropped materially since 1920, and were from 15 to 50 per cent above the 1913 level. In some cases prices were said to be less than the cost of production. We feel warranted in taking notice of the fact that since this case was submitted the general condition of the iron and steel industry has materially improved.

The principal raw materials used are coal, coke, dolomite, limestone, and iron ore. These are rarely all produced in any one locality, and in consequence some plants are located near the source of certain raw materials and other plants near the source of other raw materials. Transportation charges on the different raw materials are therefore of varying importance to the different manufacturers. Manifestly changes in rates on one raw material unaccompanied by like changes on others tend to cause dislocation of relative production costs. A number of readjustments resulting in reductions of rates on raw materials and finished products have been made by the carriers since 1920. The reductions were not applied uniformly upon all the raw materials, and have resulted in complaints of unjust discrimination and undue prejudice. Except in particular situations, or to the extent that rates on one or more raw materials are from a transportation standpoint too high as compared with rates on others, it would appear that reductions in rates on the raw materials should, in so far as possible, be made upon all alike.

Practically all of the ores produced in the United States, other than iron ore, are mined in the western district. Many smelters reducing copper, lead, zinc, silver, and other ores are there located, and the products are in large part shipped to industries in the East. Mining and smelting are of great economic importance to many western States. These industries were greatly stimulated during the war period, and the output increased materially. The serious depression in these industries which developed in the latter part of 1920 was attributed by the shippers in large measure to the rate increases of that year. They contended that the increased rates were so out of proportion to the value of the commodities as greatly to restrict movement. They pointed particularly to the situation as to low-grade ores, the movement of which, it was stated, had almost ceased.

The record shows that rates on low-grade ores in many of the intermountain States were not increased in 1920. Other rates, both on low-grade and high-grade ores, have since been materially reduced, in many cases eliminating the entire increase of 1920. In addition, material reductions have been made in rates on copper and lead bullion from Utah, Colorado, Montana, Arizona, and other States to eastern destinations, which in most cases resulted in rates as low as or lower than those in force immediately prior to the increases of 1920. In some instances the rates on coal used by these industries were not increased, but generally rates on fuel remain upon the level established by the increases of 1920. Manifestly, rates on fuel and other materials and supplies, which in many cases are obtained from distant sources, are of importance in determining production costs. There has been some improvement in these industries since the autumn of 1921, but, until overstocked markets shall have further readjusted themselves, the volume of movement can hardly be materially increased by establishment of any ore and smelter-product rates which would be fairly compensatory to the carriers.

ROAD AND BUILDING MATERIALS.

Evidence was introduced with respect to a number of low-grade materials used in the construction of highways, bridges, and buildings, including sand, gravel, crushed stone, chats, slag, cement, asphalt, brick, tile, plaster, and lime.

Sand, gravel, and crushed stone move in large volume, usually for short distances, load to capacity, and are of the lowest grades of freight, with little risk of damage or loss. Shippers contended that rates thereon have been increased during the last five years in greater proportion than on other commodities because of the flat increase of 20 cents per ton made in 1918; that in eastern territory increases on short-haul traffic have ranged from 43 to 96 cents per ton since 1917, whereas the price at point of origin in 1921 was 75 cents per ton; that many projects for construction, particularly of highways, have been deferred because of the high level of existing rates; that in times of depression public construction should be at its peak instead of at its minimum; that the railroads are losing traffic in these commodities because of motor-truck competition and the opening of local pits in the vicinity of large consuming points; and that these wayside pits produce inferior material to the exclusion of the standard material which otherwise would be selected and transported by rail. They requested that the entire increase of 1920 and an additional 10 cents per ton be eliminated from the present rates.

Computations from carriers' reports on file with us disclose that the revenue tons of clay, sand, gravel, and crushed stone originated by Class I carriers in 1921 were over 88 millions, a decline of less than 11 per cent from the tonnage of 1920, the year in which producers of these commodities shipped their greatest tonnage. The decline in all freight traffic in 1921 compared with 1920 was 25 per cent. Prices of sand and gravel in 1921 were much higher than in former years, averaging 75 cents per ton at the pit or quarry compared with 37 cents in 1914, 61 cents in 1918, and 65 cents in 1919. Many reductions in rates have already been made, principally in the eastern group.

Slag, a residue from the manufacture of pig iron, is largely used for the same purposes as gravel and crushed rock. It is also used by some plants as the basic material in the production of cement. Slag shippers suffered from the business depression like many others and attribute their unfavorable situation in part to freight rates. In 1917 and 1918 the production of slag was greatly stimulated by the effect of war conditions upon the iron and steel industry. The production in 1918 was the greatest of record. Prior to the increase of 1920 many of the plants now closed down had ceased to operate or were operating at much less than capacity. The aggregate production in 1921 was equal to that of 1916, which the testimony indicates was a normal year.

Cement is of great and growing importance in the construction of highways, buildings, and other structures. Unlike most other commodities, its movement in 1921 was almost equal to that in 1920, the peak year for this industry. In 1921 cement plants shipped by rail and otherwise 94,672,000 barrels as against 96,329,000 in 1920. The annual shipments of cement during the period 1911 to 1919, inclusive, ranged from 70 to 94 million barrels. Reports of Class I carriers on file with us disclose that the tons originated on their lines were 15,610,486 in 1921 and 15,400,210 in 1920. Cement shippers testified that the tonnage of cement in 1921 was maintained largely because of the road-building programs of the Federal and State Governments. One of their exhibits indicates that, aside from the cement transported for road-building purposes, the movement in 1921 was, except for 1918, the smallest in the past 11 years. Prices have not fallen to as great an extent on cement as on many other commodities. The average price at the mill during 1921 was \$1.66 per barrel compared with 92 cents to \$1.10 per barrel during the years 1913, 1914, and 1915. The price in February, 1922, was \$1.50 per barrel.

Large quantities of coal are used in the manufacture of cement. Shippers of cement urged reductions in rates on coal as well as on cement. They estimated that, on the average, transportation

charges on the quantity of coal required to produce a barrel of cement increased from 13.6 cents in 1913 to 24.9 cents in 1921, or 11.3 cents. Of this about one-half was added by the increase of 1920. Taking these figures as a base, a reduction of 15 per cent, for example, in coal rates would reduce the production cost of cement by less than 4 cents per barrel. Shippers contended that cement rates are unduly high because increased in greater proportion during recent years than rates on other commodities; that cement loads more heavily than the average of all freight and yields higher car-mile revenues; and that present freight charges on the materials constitute too great a proportion of the production cost. They testified that from 13 representative producing points car-mile revenues on cement averaged 89.29 cents in 1921 and 51.82 cents in 1915. These figures were based upon short-line distances and computed upon a loading greater than the average for cement, which makes comparison with statistics of average car-mile revenues on all freight of little probative value. The car-mile revenue shown for 1921 on cement is 72 per cent greater than for 1915. This increase is approximately the same as the average increase in the ton-mile revenue from freight traffic for the country as a whole. Other exhibits indicate that the increases in cement rates since 1913 range from 55 per cent on long hauls to 133 per cent on hauls of 25 miles and less. The increase for the average haul of 180 miles is 73.3 per cent. The averages used for cement were not weighted.

The evidence with respect to brick, building tile, and other low-grade clay products, is similar to that as to other basic commodities. These articles load heavily, are transported in almost any kind of equipment, and the risk of loss or damage is small. Prices have receded materially from the peak of 1920, and the industry as a whole showed marked depression in 1921. The situation of the paving-brick industry was particularly stressed. It was urged that because the weight per unit of roadway surface, when paved with brick, is greater than when paved with other materials such as asphalt and concrete, the effect of the general rate increases has been almost to prohibit the use of paving brick except where it moves to the point of consumption by forms of transportation other than rail. In *National Paving Brick Mfrs. Assn. v. A. & V. Ry. Co.*, 68 I. C. C. 213, consideration has been given to rates and commodity descriptions on brick and certain other clay products throughout the country east of the Rocky Mountains. A revised list of articles subject to brick rates was prescribed, rates were provided on common brick lower than on other clay products for distances up to 150 miles, and revisions in rates were made in the eastern group approximating a 10 per cent reduction in the aggregate. In view of the findings in

that proceeding more extended discussion of rates on clay products is unnecessary in this report.

Evidence was introduced with respect to sewer pipe, segment sewer blocks, drain tile, wall coping, flue lining, and chimney pipe. Clay, coal, and labor are the principal items of cost in their manufacture. The business for 1920 was the largest experienced. After September, 1920, fewer orders were received than during prior years. Early in 1921 municipalities and dealers complained of the increased freight rates and refused to buy in excess of actual needs, with the result that sales were only about 80 per cent of production.

Evidence was also introduced with respect to plaster, lime, and asphalt which differs little from that as to other materials already discussed. Shippers of asphalt contend that rates thereon should not exceed cement rates. We will not pass upon that contention in this proceeding.

FOREST PRODUCTS.

Practically all important regions producing either hardwood or soft wood lumber, including the Pacific slope, the Great Lakes region, and the South, were represented at the hearing. Many reductions of lumber rates have been made since August, 1920, notably from the Pacific slope to points on the east of the Missouri River, ranging from 7 to 16 cents per 100 pounds, and from the Southeast and Southwest, mainly to certain territory west of the Missouri River. Reductions tending to restore former relationships as between long and short hauls were ordered by us in rates on hardwood lumber from the South to the territory north of the Ohio River in *Southern Hardwood Traffic Asso. v. I. C. R. R. Co.*, 66 I. C. C., 68. The carriers have indicated their intention to make reductions in like amounts in the rates on pine and other soft woods from and to substantially the same territories, and some of these reductions have been made effective. The full facts are lacking as to the effect of reductions in rates on forest products but they appear to have been followed by increase in rail movement. Whether the aggregate consumption was increased thereby does not appear.

The evidence shows that depression in the lumber trade had existed since the latter part of 1920 but on the whole, with local exceptions, the volume of lumber traffic had fallen off to a slightly less extent than freight traffic in general. There had been increase in the relative movement by water as compared with rail.

Much of the evidence dealt with the relative rate situation of the different competing lumber-producing regions and the effect thereon of rate readjustments which carriers have made, but practically all representatives of the lumber industry who appeared advocated

general reductions in lumber rates substantially to the basis existing prior to the increase of 1920. Some urged that these be made at least on low grades which under prevailing conditions present the greatest difficulty in marketing lumber, whether of hard or soft wood. The hardwood producers especially assail the rates on logs. Three or four cars of logs are required to produce one car of lumber, and therefore the increases in log rates have substantially affected the cost of producing lumber.

A representative of the Board of Railroad Commissioners of South Dakota presented evidence tending to show that, following the general increase of 1920, rates on lumber from practically all producing regions to South Dakota were relatively higher than to other States, and that reductions subsequently made, with few exceptions, have not applied to South Dakota but to destinations already taking lower rates, distance considered. More than 90 per cent of the lumber consumed in South Dakota originates on the Pacific slope. Prior to the reductions from the West, above mentioned, rates to South Dakota were in many cases as high as to points much farther east, are now higher than to the Missouri River or Chicago, and are almost as high as to points in central and trunk-line territories. It is not possible upon this record to prescribe specific rates to South Dakota, but the attention of carriers is called to the apparent necessity for some readjustment. In making reduction of rates to readjust competitive situations at points of production due regard should be given to the situation at consuming points.

AGRICULTURAL PRODUCTS AND LIVE STOCK.

Agriculture was the first industry to feel the depression in 1921. Prices of farm products fell in some instances even below those of 1913 and the general average of farm prices in one month of the summer of 1921 reached a point only 6 per cent above that of 1913. The rapid and marked decline in prices without similar reduction in production costs created a serious situation and resulted in a heavy falling off in the purchase of manufactured articles of all kinds in rural sections. This impairment of purchasing power, combined with the falling off in foreign demand, contributed largely to the general business stagnation of 1921.

In *Rates on Grain, Grain Products, and Hay*, 64 I. C. C., 85, reductions were ordered on those commodities in the western and mountain-Pacific groups, removing one-half of the increases permitted in 1920, with an additional 10 per cent reduction on grains other than wheat. The effect was to bring down rates on the coarse grains nearly to what they were before the increases of 1920. Material

downward readjustments have been made by the carriers voluntarily in export rates on grain and its products to North Atlantic and Gulf ports. Upon these rates a large tonnage is moved. Reductions have been made in particular instances in rates on fruits, vegetables, and other agricultural products. Following recommendations by us in *National Live Stock Shippers' League v. A., T. & S. F. Ry. Co.*, 63 I. C. C., 107, carload rates on live stock between points in the mountain-Pacific and western groups which in September, 1921, were 50 cents per 100 pounds or more, were reduced 20 per cent, but not below 50 cents.

We have referred to the general reductions in practically all carload and a few less-than-carload rates on the principal products of the farm, garden, orchard, and ranch, applicable during the first six months of 1922. These reductions resulted in rates not exceeding 90 per cent of the rates established August 26, 1920. Among the articles affected are grain and grain products, rice and rice products, hay and straw, butter and cheese, eggs and live poultry, peanuts, fruits and vegetables, live stock, cotton and cotton linters, cotton seed and cottonseed hulls, unmanufactured tobacco, wool, and mohair.

Complaint has been made of a number of exceptions or omissions in applying these reductions in the various rate groups. Cotton rather generally moves on any-quantity rates. The reductions were applied to cotton, any quantity, in the southern group, and in that portion of the western district known as southwestern territory, but not in the remainder of the western group, in the eastern or mountain-Pacific groups, or on interterritorial traffic except between points in the Southwest and points in the southern group. Peanut rates were reduced in the southern group, but not in the other groups, and the reductions were confined to peanuts "raw in the shell." It is said that peanuts, shelled, and certain products such as peanut butter, should have been included. Cottonseed and peanut meal and cake in the western district and eastern group are generally subject to grain-product rates and therefore received the benefit of the reductions, whereas in the southern group specific commodity rates apply which were not reduced. Shippers contend that this has resulted in undue prejudice to industries in that group.

Rate reductions on rice and its products were not made in New England or in western trunk-line territory. Transcontinental class rates applying on farm products were not reduced. The schedules filed did not cover watermelons from Georgia and other Southern States to northern markets, or potatoes from Aroostook County, Me., to New England and trunk-line territories. Rates on potatoes from that part of Maine to important eastern markets, such as New York and Philadelphia, were left on a materially higher basis than from

Wisconsin and other more distant western producing points. In some instances they were higher from Presque Isle, Me., than from Waupaca, Wis., and Cadillac, Mich., to the same destinations. Among the typical commodities not covered by the reductions in any group were broom corn, seeds, nursery stock, coconuts, pickles, preserves, canned goods, milk, oleomargarine, and frozen eggs. Certain shippers urged inclusion of these commodities on the ground that they were analogous to other articles upon which the rates were reduced. Thus, shippers pointed out the importance of seeds to agricultural interests, and urged that seed rates should be reduced in order to stimulate production.

In the late months of 1921 and in January and February, 1922, there was an appreciable advance in prices of live stock, and of grain, cotton, and other important agricultural products, and the situation in producing regions has materially improved. As stated, the reduced rates on farm products and live stock other than those prescribed by us in *Rates on Grain, Grain Products, and Hay, supra*, are scheduled to expire June 30, 1922. The failure to apply the reductions more uniformly has created difficulties which in our judgment should be corrected. We are of opinion that the reductions should include carload rates on nursery stock and farm and field seeds in all rate groups; rates on potatoes from Maine, watermelons from points in the southern group, peanuts "raw, in the shell," cottonseed and peanut cake and meal, rice and rice products, in carloads, and on cotton and leaf tobacco, any quantity, where not now included.

PACKING-HOUSE PRODUCTS.

Packing houses located at East Cambridge, Mass., New York, and other eastern points draw a considerable portion of their live stock from the West. Packing houses in the interior, Iowa, for example, compete with them in eastern markets. Immediately prior to the general increase of June 25, 1918, rates on cattle and hogs from the Mississippi River to East Cambridge were from 1 to 17 cents per 100 pounds lower than the rates on cured or fresh meats. These differences have been widened by the general rate changes of the last four years until, following the 10 per cent reduction on live stock effective in January, 1922, the differences now range from 12 to 40½ cents, and seriously handicap interior independent packers in the eastern markets.

Upon this record it is not practicable to prescribe a specific relationship between the rates on the live animal and on the product, but the carriers should make some revision of these rates from the Mississippi River eastward.

FERTILIZERS AND FERTILIZER MATERIALS.

Commercial fertilizers and fertilizer materials are used extensively in the South and East. The use of fertilizer was greatly reduced in 1921. The States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia consumed 2,625,505 tons of fertilizer as compared with 4,794,659 tons in 1920, 4,742,406 tons in 1914, and 4,159,047 tons in 1911. The decreased use of fertilizer in 1921 was accompanied by decreased yield per acre of many crops, with a resulting decline in traffic for the carriers. The widespread and increasing ravages of the boll weevil in the South, with consequent restriction in the acreage of cotton planted and lessening of the product, have greatly decreased the tonnage carried by rail. The direct effect has been to decrease the buying power of the whole of that region. This condition is a matter of grave concern to southern shippers and carriers. The liberal use of fertilizer is one of the most practical and effective methods of combating the boll weevil.

Commercial fertilizer consists mainly of a mixture of acid phosphate, ammoniates, and potash. Nitrate of soda is the chief mineral ammoniate and is imported from Chile. Tankage from the packing houses and cottonseed meal supply the organic ammoniates.

The fertilizer manufacturers pay the transportation charge on raw materials, and usually the outbound charge on the product. The price of fertilizer at the time of the hearing approached the price in 1914. The extent to which fertilizer is used is determined to a considerable degree by the farmer's ability to obtain credit. This is confirmed by the carriers. Local dealers or distributors have been accustomed at the beginning of the planting season to extend such credit to mature with the crops, in turn depending upon the fertilizer manufacturers for credit. Some of these manufacturers said that since the price to the farmer is practically upon a pre-war level, rate reductions must be made, and the benefit retained by them in order to enable them to continue the customary extension of credit, thereby indirectly benefiting the farmer. Others said that a reduction will immediately inure to the purchaser.

The fertilizer for use in production of this year's crops has already moved, but the annual movement of raw materials into the fertilizer plants does not begin until May. Fertilizer manufacturers asked that reductions ranging from 20 to 25 per cent be made on fertilizer materials and that on fertilizer we prescribe for the southern group a distance scale of rates suggested by them. This scale would involve a reduction of approximately 22 per cent under the scale prescribed by us in *Royster Guano Co. v. A. C. L. R. R. Co.*, 50 I. C. C., 34, as subsequently increased.

WASTE MATERIALS.

Dealers in junk, scrap iron, waste paper, and similar waste materials urged that the level of freight rates thereon was wholly out of proportion to the value of the commodities, that their movement except for short hauls had materially declined, and that such movements were being made to a large extent by motor trucks or other forms of transportation. Many rates in the eastern group are higher on scrap lead than on pig lead, on scrap iron than on pig iron. Rates on waste paper in the same group are higher in some instances than on paper and paper products.

The utilization of waste materials is of economic value to the country. Dealers contend that such materials are quite as basic as the new materials and that this should be recognized in adjusting rates.

It is not possible upon this record to prescribe a definite adjustment, but carriers should promptly revise their rates on waste materials.

PETROLEUM AND PRODUCTS.

In the United States 469,639,000 barrels of crude oil were produced in 1921, an increase of 5.9 per cent over 1920, and 125,000,000 barrels were imported from Mexico. The crude oil refined in 1921 aggregated 443,000,000 barrels, an increase of 2.2 per cent over 1920, and the total amount of gasoline, kerosene, fuel, gas, and lubricating oils shipped was 405,204,000 barrels, an increase of approximately 1 per cent.

Exhibits introduced by shippers indicated that the crude oil moved by rail in the first nine months of 1921 was approximately 25 per cent less than in 1920, and that in the same period of 1921 only 6.9 per cent of the crude oil received at refineries came by rail as compared with 9.9 per cent in 1920. According to reports of carriers on file the tons of crude oil originated on Class I carriers in 1920 were 6,435,074, and in the first nine months of 1921, 5,044,513 tons, or 22 per cent less. According to shippers, the number of carloads of petroleum products shipped by rail in 1921 was in round figures 735,000, or 8.5 per cent less than in 1920. The number of tons of petroleum products originated on Class I carriers as appearing in their reports was 29,615.954 in the year 1920 and 27,216,185 tons in 1921, a decrease of 8 per cent.

Fuel oil, gasoline, and other petroleum products are important elements of cost in mining, agriculture, and industry, being used as fuel or motive power for mine machinery, irrigating plants, tractors, and trucks. Petroleum loads heavily, moves in large volume with little loss or damage, and shippers usually furnish the tank cars. They say that their compensation from the carriers for use of the cars is less than cost. The carriers pay at the same mileage rate

on empty as on loaded cars, and the movement empty is practically 100 per cent of the loaded movement.

In August, 1918, at the solicitation of the petroleum industry, the Director General of Railroads substituted a flat increase of 4.5 cents per 100 pounds in all carload rates on petroleum and its products for the 25 per cent increase previously applied under his General Order No. 28. This resulted in comparatively small percentage increases in long-haul rates, but the percentage increases in short-haul rates were greater than on commodities generally and in many cases ranged from 100 to 200 per cent. Shippers stated that as a result most short-haul rates upon petroleum, especially upon crude and fuel oil, are greatly out of proportion to the cost of transportation.

Petroleum and its products are consumed generally throughout the country, but the greatest consumption is in the States east of the Mississippi and north of the Ohio and Potomac Rivers. At one time most of the refineries were located in the eastern group. In recent years many refineries have been constructed in the Southwest and at Atlantic, Gulf, and Pacific coast points. In 1921 there were approximately 250 refineries in the Southwest, of which 130 were shut down. Less than 50 per cent of the total capacity of the interior southwestern refineries was in operation during that year, but refineries on the Gulf coast and east of the Mississippi River were operated to approximately 85 per cent of capacity. Some of the southwestern refineries appear to be of inferior construction, but nothing of record indicates that, capacity considered, most of them are not as efficient in operation and equipment as refineries generally.

Shippers urged that the greater extent to which interior southwestern refineries were idle in 1921 was due to the percentage increases in rail rates on petroleum products from these refineries to northern and eastern markets, which had widened the spread in transportation charges to the disadvantage of southwestern refiners. For example, the rates from Tulsa, Okla., and Wood River, Ill., to Cleveland, Ohio, prior to the increase of 1920 were 45 cents and 25 cents, respectively, a difference against Tulsa of 20 cents. That increase resulted in rates of 62 and 35 cents, respectively, increasing the difference to 27 cents. The record indicates that although more than 55 per cent of the crude petroleum produced in the United States in 1921 came from wells in the Southwest, less than 20 per cent of the total crude produced was refined by the interior refineries in that region; and that, of the crude produced in the Southwest, 57 per cent moved either by pipe lines to refineries elsewhere, or by pipe lines and tank vessels to Atlantic ports, thus depriving the rail lines of much revenue.

Shippers say that such readjustments as the carriers have made since August, 1920, instead of lessening the burden placed upon the southwestern refineries by the percentage increases, have augmented that disadvantage to the extent of 3.5 cents per 100 pounds, the amount of a flat reduction in rates between points in central territory and from central to trunk-line territory. Following that reduction the advantage of Wood River over Tulsa in reaching Cleveland became 30.5 cents.

Rail lines are not obtaining as great a proportion of the total movement as they did in former years. This is due chiefly to the rapid development and increased use of other forms of transportation, notably pipe lines, motor trucks, tank vessels, and accessorial storage facilities. While transportation by these other forms of carriage is undoubtedly in many cases more economical than by rail, and while rail lines may not expect to retain the entire traffic, use of the other forms of transportation is enhanced by the existing level of rail rates. The increases in many short-haul rates over the 1917 basis are now from 5 to 6.5 cents per 100 pounds, which in themselves would be high rates in many cases. Many short-haul rates are materially higher than on other commodities of like transportation characteristics. The rail lines are losing some short-haul traffic which they might retain at lower but still remunerative rates. Self-interest would seem to dictate revision by them of their short-haul rates.

Shippers of petroleum throughout the country have agreed upon a plan contemplating reductions in and readjustment of practically all petroleum rates on the following basis:

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| 1. In official classification territory. | Readjusted to rates of January 1, 1917, plus 40 per cent. |
| 2. In New England. | 4.5 cents per 100 pounds. |
| 3. Between trunk-line territory and New England. | 4.5 cents per 100 pounds, with 90 per cent of fifth class as a maximum. |
| 4. Between central freight association territory and New England. | Readjusted to basis of 2 cents per 100 pounds over the New York rates (No. 1 above). |
| 5. Southern and western classification territories, except Pacific coast. | (1) Local rates—15 per cent, plus a specific reduction of 4.5 cents per 100 pounds.
(2) Proportional rates—15 per cent, plus 2 or 2.5 cents per 100 pounds, whichever was authorized in freight rate authority No. 96. |
| 6. Pacific coast territory. | 15 per cent, plus specific reduction of 4.5 cents per 100 pounds. |
| 7. All territories. | Application of any minimum rate for short hauls eliminated. |

It is not necessary to discuss this plan in detail. Little specific information was presented relative to its effect upon existing rate structures or the revenues of the carriers. Evidently important changes in relationships and decrease in revenue would result from its adoption, unless accompanied by an increase in tonnage hardly to be anticipated. In official classification territory the reduction would be about 30 per cent and carry the rate level below that obtaining immediately prior to August, 1920. The rates could be made effective only by recomputing all existing rates and reissuing the schedules. This would take much time.

The percentage increase of 1920, coupled with the subsequent reduction of 3.5 cents in central territory, has tended to lessen the rail movement of refined products and fuel oil from southwestern refineries to northern and eastern markets and to increase the movement of crude oil by pipe line from southwestern producing territory to northern refineries, and also to Gulf coast refineries from which the movement is by water to North Atlantic ports and thence by short rail hauls into the interior. As a result the southwestern refineries are suffering while other refineries are operating more nearly to capacity.

This situation appears to clearly fall within the class of readjustments contemplated when the increases of 1920 were authorized. Carriers should promptly revise their rates from the Southwest to the eastern group in order to lessen the spread as compared with rates between points in central and trunk-line territories. This should not be construed as requiring reestablishment of the precise differences which existed immediately prior to the increases of 1920.

ROOFING SLATE.

Shippers of roofing slate assailed the rates on that commodity from Vermont, Pennsylvania, and other Eastern States to destinations in central territory and on the Pacific coast. Slate moves to central territory on class rates which are substantially higher than the commodity rates generally applicable on quarry products, prepared roofing, asphalt shingles, and other roofing materials. No justification for this disparity was offered, and carriers should promptly revise their rates on roofing slate to central territory so as to bring them into better accord with rates on other roofing materials.

GROCERIES.

A national organization of wholesale grocers introduced evidence to the effect that wholesalers are not only distributors but, in a sense, warehousemen and bankers as well, extending credit to retail-

ers and general country stores, and that their ability to continue this credit had been impaired by heavy losses incurred through recessions in price. These shippers urged that groceries are entitled to reductions quite as much as farm products, in that groceries are among the necessities of life, and many, such as canned goods, are farm products at a later stage.

Canners of fruits, vegetables, milk, and other commodities, located in California, Indiana, Maryland, Utah, and other States, urged reductions on canned goods for similar reasons. Canning conserves foodstuffs and permits a wider distribution than would otherwise be possible. The evidence indicates that prices have declined appreciably since 1920. Utah shippers testified that their prices in 1921 were 50 per cent of those in 1920, owing, in part, to a large surplus carried over from that year; and that they had experienced heavy losses in consequence, even though their shipments in 1921 did not diminish in volume. A shipper of pickles insisted that any reduction made upon canned goods should apply to sauerkraut and pickles in barrels or bulk.

The wholesale grocers said that staple foods move, for the most part, to retail dealers in less-than-carload lots, generally at class rates. They urged that it would be a mistake to confine rate reductions to carload traffic, as to do so would favor large dealers at the expense of small and would result in little benefit to the great mass of consumers. Generally transportation charges on movements from jobbers to retailers are paid by the latter. The wholesale grocers claimed that they would not gain financially by reductions in less-than-carload rates, but that they favored such reductions in the public interest, and asked that reductions be required in all rates on foodstuffs, both in carloads and less than carloads, to a basis "somewhere near their pre-war level."

MILK, CREAM, AND DAIRY PRODUCTS.

The evidence as to milk, other than canned, dealt largely with rates into certain great cities. Particular readjustments to New York, Chicago, and other centers were advocated, but will not be here discussed. The milk shippers pointed out that when rates on products of the farm were reduced by the carriers in January, butter, eggs, and cheese were included, but not milk. They apparently disregard the greater increase applied in 1920 to butter, eggs, and cheese.

Dairy products are produced chiefly in the States west of the Indiana-Illinois State line and, inasmuch as the chief markets are in the East, their transportation involves comparatively long hauls. In eastern seaboard cities competition is encountered with imported commodities, particularly butter from Denmark, upon which the

transportation charge is approximately 3 cents per pound. Shippers of dairy products urged reductions greater than those already made on the ground that these commodities are necessities of life and that reductions are needed to meet the competition of importers. Danish butter is said to be of high quality.

PAPER AND PAPER PRODUCTS.

Manufacturers of newsprint and other kinds of paper, box board, and paperboard, urged reductions in rates on those commodities. At the beginning of 1922 paper mills were being operated at about 60 per cent of capacity. The prices of paper had declined to approximately 50 per cent over those obtaining just prior to 1916. At that time the contract price of newsprint paper was about \$40 per ton; in 1920-21 it reached \$130 per ton; and by February, 1922, had declined to \$70 per ton.

Rate reductions were urged by paper manufacturers not only on the finished product but on raw materials used in the manufacture of paper, such as pulp wood, coal, clay, sulphur, resin, and tallow. Between 3 and 4 tons of these materials are required to produce 1 ton of newsprint paper. Rates on paper from New England were especially assailed on the ground that relatively lower rates were in effect from western mills. The New England shippers urged us to prescribe rates on newsprint paper not exceeding 80 per cent of the rates on book, printing, and wrapping paper, with sixth-class rates as maxima, and further urged that reductions should be made from New England to Chicago and western points, even though reductions were not made from the western mills. They also contended that, if reductions are to be general, the rates from New England to points in the eastern group should be lowered to a greater extent than rates from western mills. The evidence does not warrant fixation of the proper rate relationship between these competing mills.

COTTONSEED PRODUCTS, VEGETABLE OIL, AND SOAP.

There are about 750 cottonseed-oil mills in the cotton-growing territory of the South. They represent an investment of about 250 million dollars and crush 85 per cent of the cotton seed produced. The products are cottonseed oil, meal, hulls, and linters. Cottonseed oil is largely used in the manufacture of soap and also is refined to produce lard substitutes. In 1921 this industry brought its costs down materially below those of 1920. About 500 of the mills were operated in the season 1921-22, 300 of them continuously. The failure to operate more nearly to capacity is attributed in part to high freight rates.

Soap moves for the most part in car lots from factories to distributing points, but there is also a considerable less-than-carload move-

ment from factories. From distributing points the movement is in less than carloads. The principal raw materials used are fats, greases, and oils. Caustic soda, soda ash, lime, and borax are also largely used. The aggregate inbound and outbound tonnage of materials and product was estimated at 3,000,000 tons annually, much of it moving for considerable distances. Delivered prices of soap were said to be about 33½ per cent over those of 1914. The soap manufacturers asked that as soon as a reduction in rates is possible it be made horizontally in all rates. They say that a reduction in coal rates of at least 65 per cent would be necessary to benefit them as much as a 5 per cent reduction in all rates.

MISCELLANEOUS COMMODITIES.

Shippers of many other commodities appeared in this proceeding. Their testimony covered a wide range. It dealt extensively with the prices then prevailing as compared with those of 1920 and prior years, the effect of price declines and the business depression of 1921 upon producers, manufacturers, and dealers, the transportation characteristics of their commodities, and other matters deemed by them to bear upon existing rates and the need for reductions. Their contentions fall into two main classes: one, that the prosperity of their particular industries, or of the country as a whole, depend as much upon reductions on their commodities as on others and that their commodities are either basic or quite as basic as those generally so considered; the other, that any reductions required should be in all rates in order to obtain the greatest good for the greatest number. These contentions, of either class, were made by many witnesses upon the premise that we should find it possible under prevailing conditions to require further rate reductions, as to which they expressed no views. The varied character of the commodities covered by the evidence is apparent from the following partial list of those not already discussed: Agricultural implements, alkali products, bauxite ore, beverage containers, burial goods, chewing gum and candy, clam and mussel shells, coffee, creosote oil, explosives, feldspar, furniture, glass and glassware, granite and marble, ice, insecticides, naval stores, plumbers' earthenware, pottery, shoes, soda ash, soil conditioners, syrup and molasses, tanks, terra cotta, tin cans, wood pulp and pulp wood, and wool.

In view of the conclusions hereinafter reached individual discussion of each of these various commodities is unnecessary. Summarized, it appears that shippers of practically all commodities have been suffering from the business depression of 1921 and that in varying degrees nearly all ascribe this prolonged depression in part to the existing high level of rates and feel that, until downward revision

is made, return to a volume of business equal to that of years prior to 1921 probably will not be attained. Many of these commodities compete with one another for various uses, and to reduce rates on one and not upon the other will, it was claimed by some, result in unjustifiable discriminations between particular shippers or commodities and in disturbance of business conditions. Many move on class rates in some portions of the country and on commodity rates in others. Many move in less-than-carload lots at some stage before reaching the point of consumption. In many cases the transportation charges on the final less-than-carload movement nearly equal the aggregate of the previous charges on raw materials and finished product in carloads. Although shippers of most manufactured articles seek reductions upon the raw materials which enter into the manufacture, practically all insisted that reductions are necessary on the product as well. Taken as a whole, the evidence relative to the miscellaneous commodities indicates that reductions confined to a few so-called basic materials would not satisfy many shippers and would bring about numerous complaints of discrimination between particular shippers or communities.

PASSENGER FARES.

During the 10-year period, 1911-1920, the number of revenue passenger-miles substantially increased, as evidenced by the following figures compiled by our bureau of statistics, showing the number of revenue passenger-miles for each year, 1911 to 1921, Class I roads, stated in millions.

Year.	Eastern district.	Southern district.	Western district.	United States.
Fiscal year ending June 30:				
1911.....	15,162	4,872	13,137	32,371
1912.....	15,402	4,221	12,693	32,316
1913.....	16,067	4,384	13,404	33,855
1914.....	16,349	4,585	13,633	34,567
1915.....	14,961	3,983	12,841	31,790
1916.....	15,628	4,116	13,902	33,646
Calendar year:				
1916.....	16,627	4,574	13,385	34,586
1917.....	18,406	5,777	15,292	39,477
1918.....	19,517	7,405	15,755	42,677
1919.....	21,471	7,099	17,788	46,358
1920.....	21,927	6,618	18,304	46,849
1921.....	18,719	5,085	13,525	37,329

For the country as a whole the increase from 1911 to 1920 was over 44 per cent, but the year 1921 showed a decrease as compared with the years 1917, 1918, 1919, and 1920. The charted trend of the years 1890-1915 would have carried the revenue passenger-miles for all carriers in 1920, 1921, and 1922 to slightly in excess of 43, 44, 68 I. C. Q.

and 45 billions, respectively. The movement in 1921 was approximately 6 billions below and in 1920 approximately 4 billions above that trend. To equal in 1922 the revenue passenger-miles indicated by the trend would require an increase over 1921 of about 19 per cent, and to equal those realized in 1920 an increase of about 25 per cent.

In 1918 standard passenger fares were increased to a minimum basis of 3 cents per mile. This resulted in an increase of 50 per cent where 2 cents per mile was the basic fare, 20 per cent where 2.5 cents applied, and no increase where the fare was 3 cents or higher. In 1920 we authorized an increase of 20 per cent in passenger fares and a surcharge upon passengers in sleeping and parlor cars equal to 50 per cent of the charge for space in such cars. No increases were proposed by carriers upon passenger traffic prior to the decision of the Railroad Labor Board, which prescribed wage increases estimated to be somewhat in excess of 618 million dollars. The average revenue per passenger-mile of Class I roads on all classes of passenger traffic was 1.976 cents in 1914 and 3.088 cents in 1921, an increase of 56.3 per cent. During the same period their average revenue per ton-mile on freight increased 76.2 per cent. The total charge to the public was decreased on January 1, 1922, by removal of the Federal tax of 8 per cent on passenger and, as stated, 3 per cent on freight traffic.

According to statistics compiled by us from annual reports of Class I roads the operating ratio in 1920 for passenger and allied services was more favorable than that for freight service. For the 12 months ended September 30, 1921, the situation was reversed, and, except in the southern district, the operating ratio for the freight service became the more favorable of the two. This is readily explained by the greater increase in freight rates than in passenger fares and by the fact that decline in traffic permits of greater reduction in freight-train than in passenger-train mileage. The operating ratios for the periods mentioned are given below. These ratios are not necessarily indicative of what the corresponding ratios would be for 1922 under present rates and fares.

District.	Calendar year 1920.		Twelve months ending Sept. 30, 1921.	
	Freight service.	Passenger and allied services.	Freight service.	Passenger and allied services.
	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Eastern.....	102.77	90.26	85.28	90.69
Southern.....	97.27	83.16	89.27	86.52
Western.....	91.48	82.96	79.89	85.45
United States.....	97.50	86.17	83.57	87.83

Many causes contributed to the decrease in revenue passenger-miles in 1921. They include the business depression, the increased use of motor vehicles, the improvement of highways, and the high level of passenger fares. Reduction in fares would no doubt increase travel somewhat, but the record does not warrant the conclusion that under existing conditions this stimulus would suffice to offset the resulting loss in revenue. Eastern carriers estimated that restoration of the passenger fare of August 25, 1920, a reduction of 16½ per cent, would result in a revenue loss of \$176,560,000 annually in the whole country, and that to offset that loss an increase of 20 per cent in passenger traffic would be necessary, allowing nothing for the added expense incident to the additional traffic.

The Pullman Company sought removal of the surcharge, contending that it tended to reduce travel in sleeping and parlor cars. A sharp decline in such travel followed the application of the surcharge. Fluctuations since September, 1920, in the number of Pullman passengers carried have almost paralleled those in the number of all revenue passengers carried, as shown by the following table:

Month.	All passengers.	Pullman passengers.	Month.	All passengers.	Pullman passengers.
1920.			1921.		
June.....	102,065,000	3,618,060	April.....	88 00	2,443,961
July.....	114,698,000	3,592,586	May.....	88 00	2,553,188
August.....	110,458,000	4,126,186	June.....	84 00	2,774,177
September.....	104,842,000	3,422,678	July.....	80 00	2,903,775
October.....	99,251,000	2,974,833	August.....	80 00	2,970,079
November.....	96,921,000	2,692,723	September.....	84 00	2,890,135
December.....	99,308,000	2,759,442	October.....	80 00	2,476,959
1921.			November.....	78 00	2,245,621
January.....	94,661,000	2,857,771	December.....	82 00	2,309,481
February.....	83,474,000	2,307,168	1922.		
March.....	90,867,000	2,523,165	January.....	81,278,000	2,444,594

The record indicates that travel in sleeping and parlor cars has not decreased in substantially greater ratio than travel generally, and does not warrant a conclusion that the decrease in travel in sleeping and parlor cars is traceable to the surcharge.

Theatrical and Chautauqua interests introduced evidence on which they sought establishment of party fares lower than the prevailing individual fares, and lower charges for the movement of baggage and baggage cars. Prior to Federal control carriers generally maintained party fares on a lower basis than individual fares. We have no authority to require carriers to establish for particular passengers or particular occasions special fares lower than the regular fares. The record affords no adequate basis for dealing with the carriers' charges or practices in respect of baggage. But the carriers may themselves establish party fares, or change their practices in the handling of baggage, if they do so without unlawful discrimination.

ELECTRIC RAILROADS.

The only evidence as to the rates, fares, and charges of electric railroads was introduced in behalf of a national association of such carriers. This was substantially to the effect that most electric lines do not fall within the purview of section 15a of the interstate commerce act; that while generally their freight rates and charges were increased pursuant to *Increased Rates, 1920, supra*, the authority thereby granted did not extend to passenger fares; and that no reductions in their charges are warranted at this time. This evidence stands uncontroverted upon the record.

In the case cited we said at page 253:

Petitions have been filed in this proceeding by a national organization of electric lines, seeking permission to increase their rates in the same proportion as the rates of trunk lines are advanced. The operating costs of these lines have, on the whole, increased in approximately the same ratio as those of steam railroads. In some instances there is competition between the electric lines and the steam railroads. We conclude that the freight rates of electric lines may be increased by the same percentages as are approved herein for trunk lines in the same territory. This is not to be construed as an expression of disapproval of increases, made or proposed in the regular manner, in the passenger fares of electric lines.

Thereafter many passenger fares were increased by electric lines in the same proportion as those of steam lines. On the whole, these carriers have had substantially the same relief as the steam carriers. The influences affecting their charges are much the same and it would seem that they should receive like treatment. But the evidence is too meager to permit of specific findings as to individual electric lines, or electric lines as a whole.

CONCLUSIONS.

The carriers take the position that we must be guided solely by those things which are definite and certain in the past. With this we can not agree. Our function under the law is not that of mere computers and can not thus be atrophied. The duty to prescribe rates for the future carries with it the obligation to exercise an informed judgment upon all pertinent facts, present and past, in order to forecast the future as best we may. In *Rates on Grain, Grain Products, and Hay, supra*, we said at page 99:

* * * The duty cast upon us by section 15a is a continuing duty and looks to the future. It does not constitute a guaranty to the carriers, nor is the obligation cumulative. We are not restricted by past or present statistics of operation and earnings. These are serviceable only as they illuminate the future. What is contemplated by the law is that in this exercise of our rate-making power the result shall reflect our best judgment as to the basis which may reasonably be expected for the future to yield the prescribed return.

When we decided *Increased Rates, 1920, supra*, the country was still in a period of steadily rising prices. We then resolved doubts as to future operating costs in favor of the carriers. In recent months costs have been declining and traffic increasing. Rates of pay for employees have been reduced to an extent which, based upon the light traffic of 1921, is estimated by carriers to aggregate more than \$350,000,000 per annum. The Railroad Labor Board has estimated that the reduction exceeds \$400,000,000 per annum, without taking into account changes in rules and working conditions. The tendency is toward increased revenues, lowered costs, and higher net income for the carriers.

Under the adverse conditions of 1921 the net railway operating income of Class I carriers of the United States totaled \$614,810,531. Based upon the subnormal traffic of that year, and the wage rates, and prices of materials and supplies, prevailing at the end of the year, the carriers in their constructive year estimated an aggregate net railway operating income of \$907,693,630, equal to 4.72 per cent upon the valuation used by us in *Increased Rates, 1920, supra*, as adjusted by carriers to cover Class I roads only, including additions and betterments since January 1, 1920, amounting to \$778,499,045. Adopting the ratio of net railway operating income of all carriers to that of Class I carriers in 1915 and 1916 as being approximately correct for 1921, the net railway operating income in the carriers' constructive year would be for all carriers \$923,783,840, or 4.89 per cent upon the valuation taken by us in *Increased Rates, 1920, supra*.

We do not accept the adjustments made by carriers in their constructive year as correct or complete. We have indicated that further adjustments are necessary in order better to reflect probable expenditures for Federal income tax, fuel, and materials and supplies. And in considering the estimates of that constructive year in their bearing upon what may be anticipated in the immediate future we must take into account other factors. Reductions in rates will carry with them reductions in operating expenses of carriers through lessened transportation charges paid by them on their fuel and materials and supplies. Thus it is estimated that a reduction of 10 per cent in transportation charges on coal would effect a saving of over \$7,000,000 on the amount of coal consumed by Class I carriers in 1921.

The net railway operating income of all carriers has exceeded \$900,000,000 in only two years, 1916 and 1917. In 1916, the most prosperous year in the history of the railroads, it aggregated \$1,051,543,860, and during the three years of the test period the average for Class I carriers was \$906,524,492, approximately the amount which accrued as annual rental to the carriers under Federal control.

The figures heretofore given include no estimate for increased traffic over that of 1921, which clearly was subnormal. In that year the revenue ton-miles aggregated about 309.5 billions or 25 per cent less than in 1920. We do not anticipate return to the tonnage of 1920 for some time to come, but there are many indications of greater tonnage than in 1921. The gradually ascending trend of traffic during the first three months of 1922 has been mentioned. The car loadings for February and March, 1922, exceeded those of the corresponding months in 1921 by 11.7 per cent and 19.9 per cent, respectively. During the first three months of 1922 car loadings exceeded those of the same period of 1921 by 11.9 per cent.

If the trend of tonnage during the period 1890-1915 were reached in 1922, revenue ton-miles would aggregate 362.5 billions. This aggregate is substantially less than that of any year from 1917 to 1920, inclusive, and is approximately the same as that of 1916. A tonnage equal to that indicated by the trend in 1890-1915 is not beyond the realm of possibility during the next 12 months.

Any additional tonnage realized should be handled under a favorable operating ratio. Shippers and carriers alike agree that if the freight traffic of 1921 is increased by a given percentage, the percentage of increase in operating expenses should be one-half as great. It appears that under present rates, and with an increase of 10 per cent or more in traffic over that of 1921, not only would the net railway operating income of the carriers as a whole for the next 12 months be substantially in excess of the fair return herein determined, but it would greatly exceed the corresponding figure for any year in the history of railroad operation.

It is our duty to initiate such rates as will enable the carriers to earn as nearly as may be a fair return, qualified as provided in the act. In 1920 we authorized large increases in freight rates and passenger fares designed to produce the necessary revenues under the conditions then prevailing. There was then little doubt of the ability of industry to bear the increased charges. The situation has since changed. The country has been passing through a period of abundant supply and slack demand, in which prices at the source have fallen off sharply. High rates do not necessarily mean high revenues, for, if the public can not or will not ship in normal volume, less revenue may result than from lower rates.

Shippers almost unanimously contend, and many representatives of the carriers agree, that "freight rates are too high and must come down." This indicates that transportation charges have mounted to a point where they are impeding the free flow of commerce and thus tending to defeat the purpose for which they were established, that of producing revenues which would enable the carriers "to provide

the people of the United States with adequate transportation." In 1921, freight traffic was only slightly more than 10 per cent in excess of that in the year ended June 30, 1915, which was not an unusual year. But the charges for moving freight traffic in 1921 totaled nearly four billion dollars, or about two billion dollars in excess of 1915. Railway operating revenues in 1921 aggregated about 5½ billion dollars, or more than 2½ billion dollars in excess of 1915. If the traffic in 1921 had equaled that indicated as normal by the trend during the 26-year period preceding the war, freight revenues and total railway operating revenues would have exceeded those of 1915 by approximately 2½ billion and 3½ billion dollars, respectively. Without any allowance for pyramiding of transportation charges in goods passing from hand to hand, these figures are significant as explaining, at least in part, existing wide spreads between the amounts received by producers and those paid by consumers.

Manifestly the depression of 1921 resulted primarily from causes other than transportation charges. But it does not follow that under present conditions existing high rates do not tend to retard the return to a more normal flow of commerce. Deflation has taken place to a greater or less extent in wages and origin prices of commodities in nearly all branches of industry but most transportation charges are still near the peak. In *Rates on Grain, Grain Products, and Hay, supra*, we said at page 100:

The really vital concern of the carriers, in this situation, is to promote the return of what may be deemed normal traffic, and anything which will help toward this end is greatly to their benefit. So far as a tendency downward in their rates can be induced, and so far as the reductions in wages and prices which have already been made effective can be converted into rate reductions, we are assured that the full return of prosperity will be hastened for both industry and labor.

Practically all agree that stability of freight rates is highly desirable and that normal traffic may not well be expected until the present widespread expectation of rate reductions is realized or dispelled. To assume that rates can or should be stabilized on the present high basis is futile. As already observed, the anticipation of a falling market tends to restrict purchases, and until the public is convinced that there is little likelihood of immediate further material reductions in prices or transportation charges, the confidence necessary to normal business will to that extent be impaired. The period of deflation has been in progress more than 15 months; demand is reviving; prices are showing a tendency to stabilize upon a level much below that of 1920 but above that of pre-war years; and conditions of the agricultural and manufacturing industries have greatly improved in the past few months.

We are of opinion that general reduction in the rate level, as substantial as the condition of the carriers will permit, will tend not only to lessen the transportation burden but also to equalize and stabilize the conditions under which commerce and industry are carried on, with consequent fuller assurance to the carriers of realizing the fair return contemplated by the law.

The results of the three-year period, ended June 30, 1917, were by statute made a criterion for just compensation to the carriers taken under Federal control. The raising of the rate level by the Director General of Railroads in June, 1918, and again under our authority in August, 1920, were necessitated by increases in operating expenses. The latter have now partially receded. The rate increases were general and justified by the increase in general cost of service, and with decrease in that cost a rate decrease, also general, is justified. The justification for decrease is to be found in the rate structure as a whole rather than in individual rates, or in rates on individual commodities. It is true that the prices of some commodities have receded more rapidly and to a greater extent than others, even as some went up more rapidly and to a greater extent than others. Readjustment, however, is not complete and the process of equalizing prices is still in progress, some coming up and others going down, which will probably result in a more equal price level in the near future. The needs of commerce can not be met if rates are to fluctuate with market prices of commodities. In bringing down the rate level to meet lowered expenses a similar process should be followed and the reduction made generally upon all commodities in substantially equal ratio.

After considering all the facts of record, including the necessity of reasonable expenditures for additions and betterments, we find and determine:

1. That on and after March 1, 1922, a fair return upon the aggregate value of the railway property of the carriers defined in section 15a of the interstate commerce act, determined as therein provided, will be 5.75 per cent of such aggregate property value as a uniform percentage for all rate groups or territories designated by this commission.

2. That the existing freight rates and charges, including charges for switching and other accessorial services and all other charges applicable to freight service which were increased by authority of *Increased Rates, 1920, supra*, will be on and after July 1, 1922, unjust and unreasonable to the extent that they may respectively include more than the following percentages of increase over the rates in effect immediately prior to August 26, 1920, in and between the various

rate groups as defined in *Increased Rates, 1920*, 58 I. C. C., 220, 489, and *Authority to Increase Rates*, *ibid.*, 302:

In the eastern group, also between points in Illinois territory and between Illinois territory and the eastern group, 26 per cent instead of the 40 per cent authorized in the decisions last cited.

In the western group, and between the western group and Illinois territory, 21.5 per cent instead of the 35 per cent so authorized.

In the southern and mountain-Pacific groups, 12.5 per cent instead of the 25 per cent so authorized.

On interterritorial traffic, except as otherwise provided herein, 20 per cent instead of the 33½ per cent so authorized.

3. That the freight rates and charges herein determined will enable the carriers in the respective rate groups, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, to earn an aggregate annual net railway operating income equal, as nearly as may be, to a return of 5.75 per cent upon the aggregate value, as taken for the purposes of this proceeding, of the railway property of such carriers held for and used in the service of transportation.

4. That in applying the reductions above prescribed, rates between points within a group and points on the border line of that group shall be reduced as provided for the group. Where a river constitutes a boundary line between two groups, points on both banks thereof shall be considered as border-line points. Where rates are constructed by the use of combinations upon gateways between any two groups, each of the factors comprising such through rates shall be reduced separately according to the group in which it accrues.

5. Under the circumstances described in paragraphs (a), (b), and (c), below, carriers should consider existing freight rates and charges as representing those made effective by authority of *Increased Rates, 1920*, *supra*, and shall apply the reductions herein prescribed accordingly, even though in such instances some individual rates or charges may be higher and others lower than those which would result from exact application of the bases above prescribed:

(a) Where, since August 26, 1920, rates or charges have been readjusted primarily to remove discriminations, prejudices or discrepancies without material effect upon the aggregate level of the rates or charges so adjusted. This does not apply to rates or charges which have been reduced since August 26, 1920, primarily for the purpose of removing all or a part of the general increase of 1920.

(b) Where previously existing recognized rate relationships were maintained in applying the increases of August, 1920, or where rates have been readjusted since August 26, 1920, to restore previously existing recognized rate relation-

ships. In these cases, such recognized rate relationships should be maintained in applying the reductions herein prescribed; or, if that is impracticable in the first instance, the rates should be readjusted to restore such relationships as soon as practicable.

(c) Where, pursuant to decisions by us, rates or charges shall have been changed since August 26, 1920. This does not apply to rates resulting from *Rates on Grain, Grain Products, and Hay*, 64 I. C. C., 85; *National Livestock Shippers' League v. A., T. & S. F. Ry. Co.*, 63 I. C. C., 107; *Southern Hardwood Traffic Asso. v. I. C. R. R. Co.*, 66 I. C. C., 68.

6. Where outstanding decisions by us require changes in rates or charges subsequent to June 30, 1922, the rates or charges existing on June 30, 1922, shall be reduced as herein provided, effective July 1, 1922. In proceeding thereafter to comply with such outstanding decisions, the rates or charges which would result therefrom shall be considered as those effective by authority of *Increased Rates, 1920, supra*, and the reductions herein prescribed shall be applied thereto, except that this provision shall not apply to rates on brick and related articles as prescribed for application between points in the eastern group in *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 68 I. C. C., 213. Those rates are not required to be further reduced hereunder.

7. Where rates on live stock have been reduced pursuant to our recommendations in *National Live Stock Shippers' League v. A., T. & S. F. Ry. Co.*, *supra*, and are now less than the rates herein prescribed, the expiration date thereon should be canceled and the rates maintained in effect.

8. In computing and applying all reduced rates and charges prescribed herein, fractions will be treated as follows:

(a) Where rates or charges are stated in amounts per 100 pounds or any other unit except as provided in the succeeding paragraphs, fractions of less than $\frac{1}{2}$ of a cent will be omitted. Fractions of $\frac{1}{2}$ of a cent or greater but less than $\frac{3}{4}$ of a cent will be stated as $\frac{1}{2}$ cent. Fractions of $\frac{3}{4}$ of a cent or greater will be increased to the next whole cent.

(b) Where rates or charges are stated in amounts per ton, or in cents or dollars and cents per carload, including articles moving on their own wheels, when not stated in amounts per 100 pounds or per ton (except as provided in (c)), fractions of less than $\frac{1}{2}$ cent will be omitted. Fractions of $\frac{1}{2}$ cent or greater will be increased to the next whole cent.

(c) Where rates or charges are stated in dollars or dollars and cents per carload, including articles moving on their own wheels, when not stated in amounts per 100 pounds or per ton, amounts of less than 25 cents will be dropped; thus \$25.24 will be stated as \$25.00. Amounts of 25 cents or more but less than 75 cents will be stated as 50 cents; thus \$25.65 will be stated as \$25.50. Amounts of 75 cents or more but less than one dollar will be raised to the next dollar; thus \$25.80 will be stated at \$26.00. This rule will apply only in cases where the present rate is \$10.00 or more.

(d) Where carriers elect to comply with the findings herein by making percentage reductions in existing rates or charges, the rules prescribed in (a), (b), and (c) shall apply.

9. Where carriers earn specific amounts as their divisions or compensation out of joint rates or charges, such amounts shall be reduced in the same manner as provided for the through rates or charges. Where the divisions of carriers participating in joint rates or charges are in fixed amounts per unit and are absorbed by other carriers, such absorptions shall be reduced in the same manner as the through rate or charge.

10. In instances where application of the bases herein prescribed results in departures from the provisions of the fourth section of the act, the carriers will be expected to correct such departures by tariffs filed not later than October 1, 1922. Temporary fourth section relief will be granted by appropriate order. If necessary, interested parties may bring to our attention any of our outstanding orders which may require modification to permit prompt and full compliance with the findings herein.

11. It is important that the reduced rates and charges be made effective at as early a date as practicable. Those herein prescribed shall be made effective on or before July 1, 1922, upon not less than 10 days' notice to the commission and to the general public by filing and posting in the manner prescribed in the interstate commerce act.

12. The findings in paragraphs 2 to 11, inclusive, apply to all respondents other than electric lines not operated as a part of a steam railroad system. They do not apply to milk and cream when the revenue from transportation thereof is not included in freight revenue. Nothing herein shall be construed as applying to the proportions of joint through rates or charges to or from points in foreign countries accruing in such foreign countries, or as authority to increase any existing rates or charges.

The respondents should advise us promptly, and not later than May 31, 1922, if possible, whether the findings herein will be carried into effect without formal order or orders by us.

McCHORD, Chairman:

In so far as it results in a reduction of rates I assent to the report in this case, but I am not in full accord with it.

At this time I am opposed to fixing a rate of annual return on the aggregate value of the railway property, and in any event to a rate of 5.75 per cent. If a rate of return is to be fixed at all, I think it should not exceed 5.5 per cent, which was that fixed by Congress at a time when conditions were at their worst and which seems to me not only adequate for present purposes but for future adjustments.

I think that the times and conditions plainly demand reductions in rates on all materials and products that are basic in industry and in

our existence as a people to a level that business interests will recognize as the lowest available for some time to come. Nothing less will quiet the prevalent unrest and agitation for lower transportation costs and encourage the needed healthy flow of traffic. The more nearly we approximate the admissible limits of reduction the more effectually will we obtain that stabilization of rates which is conceded to be essential to a full and country-wide resumption of business. In my judgment the general reductions, now decreed, fall short of full attainment of the desired end. The record convinces me that the present level of rates on the basic articles is now operating as a serious burden upon commerce and should be materially reduced, and that upon a considerably lower level of rates, with an induced higher level of traffic activity, not only will the carriers secure more net revenue but the prosperity of the country as a whole will be greatly enhanced. The pulse of both industry and transportation is still below normal, although there is and has been for several months marked improvement, and their mutual interests demand a 50-50 readjustment of the very material rate increases under *Ex parte 74*, if reductions are to be made on all classes and commodities, and a still greater reduction if confined to selected commodities. I entertain no doubt of our power and duty under the law to do this. Reductions on that general basis should also be applied to passenger fares.

There is every reason to believe that, with decreases on that basis and the more effectual stabilization of rates, the full amount of the apparent shrinkage in revenues would be more than made up by the expansion of traffic. One-half of the increases by *Ex parte 74* were made the measure of the reductions we prescribed in *Rates on Grain, Grain Products, and Hay*, 64 I. C. C., 85, in the territory embraced within the western and mountain-Pacific rate groups; and, certainly as to those commodities, which move in large volume from the West to the East, there can be no defensible prescription of reductions in any less degree in the eastern group, which enjoyed a higher percentage of increase. The report in this case quotes an extract from the report in that case, to the effect that the vital concern of the carriers is in whatever will promote a return to normal traffic movement, which a downward trend in rates will tend to accomplish. The observations there made impress me as having an application commensurate with the wider scope of this case, and the present record presents to my mind no less cogent reasons for equal reductions on other traffic of the country entering essentially into our national welfare.

EASTMAN, Commissioner, concurring:

In 1920 Congress provided in the transportation act for the return of the railroads, which were then in the possession of the Government, to their owners in order that they might be privately managed and operated. I was opposed to this early termination of Federal control for the reasons briefly stated in my concurring opinion in *Increased Rates, 1920*, 58 I. C. C., 220, 257, and have since had no occasion to change my views in this respect. But it is clear that we have no more important duty than to administer the provisions of this act in an endeavor to carry out, as nearly as possible, its spirit and intent. The policy which was then adopted, after long deliberation, is entitled to the best and fairest test that can be given it, for only in this way can its strength or weakness be fully developed as a guide for future action.

In the *Wisconsin Passenger Fare case*, decided in October, 1921, the Supreme Court has said that the "most novel and most important feature of the act" is section 15a, which "requires the commission so to prescribe rates as to enable the carriers as a whole or in groups selected by the commission to earn an aggregate annual net railway operating income equal to a fair return on the aggregate value of the railway property used in transportation." It declared that "Congress in its control of its interstate commerce system is seeking in the transportation act to make the system adequate to the needs of the country by securing for it a reasonably compensatory return for all the work it does."

Prior to the passage of the transportation act, one of the great complaints of the railroads was that this commission, in the exercise of its control over rates, had been unduly repressive and had not permitted a level high enough to sustain the credit of the carriers and enable them to secure the capital necessary if an adequate transportation system were to be maintained. I think it clear, both from its history and from the internal evidence which it offers, that it was the intent of section 15a to quiet the apprehension of investors and provide a "service-at-cost" system of regulation under which our duties with respect to general changes in rates would be reduced, as nearly as practicable, to a mathematical process.

In one important respect the process is more than mathematical, for it requires speculation as to the future. I entirely agree with what was said in *Rates on Grain, Grain Products, and Hay*, 64 I. C. C., 85, that the "rate adjustment can not with advantage be made dependent upon fluctuations in traffic," that past and present statistics of operations and earnings are "serviceable only as they illumi-

nate the future," and that the law contemplates that "in the exercise of our rate-making power the result shall reflect our best judgment as to the basis which may reasonably be expected for the future to yield the prescribed return." But it is the fair return which we must keep constantly in view, our speculation as to the future must be held within conservative limits, and we can not properly allow ourselves to be influenced by conceptions, dissociated from the act, as to what may or may not promote the general welfare.

At the time of the increase of 1920 I was of the opinion that any valid determination of "aggregate value" was then impracticable. I am of the opinion that it is now impracticable, although more data are at hand, for we have not yet finally determined the principles by which value is to be estimated from the data accumulated. However, the commission has approximated "aggregate value" for the purposes of section 15a, and it is upon this value that the fair return must be based. Using this basis, I am convinced that upon the present record we can lawfully go no further in requiring reductions, if we follow the spirit and intent of section 15a, than we now go.

In this connection, a word as to passenger fares. Neither the statistics before us nor the apparent trend of traffic, in my opinion, justify a reduction in these fares at the present time. The main argument in support of a reduction is that the carriers would gain by the stimulus to traffic more than they would lose by the decrease in rate per mile. This, however, is not a matter which can be determined with any degree of certainty. It is rather a question of business judgment or wisdom. One of the chief objects of the return of the railroads to their owners was to reap the advantages of the exercise of private initiative. While public regulation is necessarily an interference with management, it was not the intent of the act, as I read it, that we should substitute our judgment for the judgment of the managers under such circumstances as these. But it is not unfair to say that the private managers have here an opportunity to demonstrate to the country the benefits of their initiative.

One further comment. The transportation act provides for the regulation not only of rates and fares but of the wages and working conditions of employees. The latter duty is intrusted to the Railroad Labor Board. While the labor board and this commission are independent bodies, I believe that if the administration of the act is to be as successful as it can be made, the two bodies must act in some degree of cooperation. This was done very successfully in 1920 when the labor board was considering wages at the same time that we were considering rates. It rendered its decision before we rendered ours, so that we were able to cover in our increase in rates and fares the increase in wages which had been found reasonable.

As I understand the law, the regulation of wages is independent of any action that we may take as to rates, but the regulation of rates is necessarily influenced by any action that the labor board may take as to wages. At the present time the labor board has the wages of all railroad employees under consideration; but we are acting without awaiting its decision and our action is, and must necessarily be, based upon existing wages. We have no right to assume or to conclude that wages will be or ought to be reduced. Nevertheless, these wages, which constitute the chief factor in railroad operating expenses, are now on trial and it is at least possible that they will be reduced. If they should be, we must either reopen our proceedings and make a new determination, to the confusion of industry, or the country must forego for a time so large a reduction in freight rates as would have been possible if we had postponed our decision.

It is my best judgment that it would have been wiser and better if we had announced several weeks ago that our decision would be deferred until after the labor board had acted, not for the purpose of in any way prejudging the question of wages or of influencing the action of that body but for the purpose of so timing our own action that we might be assured that the rates which we were prescribing would be the lowest possible under the law and the rates most likely to remain stable for some considerable period of time.

POTTER, Commissioner, concurring:

The determination that rates and charges will be, on and after July 1, 1922, unjust and unreasonable to the extent that they may respectively include more than the percentages mentioned of increases over the rates in effect immediately prior to August 26, 1920, readjusted as mentioned in the report, is in effect a requirement that present rates and charges shall, generally speaking, be reduced 10 per cent—certain reductions heretofore made to be treated as part of such 10 per cent reduction. The support for the finding that rates and charges should be thus reduced is the belief that the prospective net operating revenues of the carriers for the year commencing July 1, 1922, if under the existing rate basis, would exceed a fair return by the amount involved in the reduction required. This conclusion has been arrived at by calculating what would have been the net operating revenues of the carriers during the year 1921 if there had been in effect during that year the bases of rates and expenses which were in effect at the time of the hearing, say, February 1, 1922, and by adding thereto amounts sufficient to represent the additional net revenue to be derived from a 10 per cent increase in traffic and from further reduced operating expenses in the ensuing year.

While results of future operation are in doubt, due to uncertainty as to the duration of the existing coal strike and other factors,
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I am convinced that the forecast which we are required to make is justified by present prospects. So far this year there has been a substantial increase of traffic and conditions are improving. There is warrant for the expectation that further reduction of expenses in substantial amount will be realized. In view of the favorable prospect and the industrial and commercial need for lower rate levels, I concur in the conclusion that reductions should be made. If, later, we are convinced that our estimate respecting increased net earnings is not warranted by increased traffic or further reduction of expenses, existing rates can be restored to the extent which then seems necessary.

Notwithstanding the need, which is decreasing, for lower rates, I am not certain that we render a real service to the shipping public in requiring reductions unless and until there is further reduction of operating expenses. Efficient transportation is more important than cheap transportation. Better service was the demand in the busy and prosperous summer of 1920. The increases then authorized were accepted generally without complaint. Returning prosperity will bring its demand for better service and unfortunately the need will be acute. I apprehend that in the near future shippers will lose and suffer more from inadequate service than could result from the continuance of present rates. But responsibility for ultimate results is not upon us. The transportation act in section 15a limits the return we may allow the carriers. We must accord to shippers the supposed benefit of that limitation.

While the conclusions of the report have the support of the majority of the commission, as most nearly representing the consensus of opinion, it is apparent from the individual expressions that to a considerable extent the views of the majority differ. I call attention to certain respects in which I have preference for different conclusions. Assuming that there is a prospective excess earning available for rate reduction, I think different treatment was required for the following reasons:

1. The percentage increases authorized by *Ex parte 74* resulted in disproportionate increases upon long-haul traffic. The effect was seriously to disturb relationships between competing communities with resulting prejudice and injustice. The short-haul, class rate, and the less-than-carload traffic is less remunerative than the long-haul carload commodity traffic. Therefore, when called upon to eliminate a portion of the increases authorized by *Ex parte 74* we should first correct the injustice of that decision by giving preference in reduction to carload and long-haul traffic.

2. The theory upon which reductions have been made since *Ex parte 74* on certain traffic, instead of on all, was that such reductions

were required in justice to the traffic to which they applied, and in order to bring such traffic into proper relation with traffic as a whole. No unlawful preferential treatment was intended when such reductions were made. The reductions now required do not increase the reduction heretofore made upon agricultural products, live stock, and certain other commodities. As the reductions heretofore made were to remove injustice and establish a proper level and relation as between commodities, it seems to me that in distributing the prospective surplus now available for reduction, such commodities should share.

3. I favor a reduction in passenger fares other than commutation fares and without removing the Pullman surcharge.

4. There are not many, familiar with the conditions in the financial world, who would question the propriety of naming 6 per cent as a fair return upon the property values of the carriers which are devoted to the public service. We should have fixed the return at 6 per cent. In *Ex parte 74* we, in effect, fixed the return at 6 per cent. The return contemplated by the transportation act to prevail for two years, if we approved, was 6 per cent and not 5.5 per cent. Within the spirit of the transportation act applicable to present conditions and needs, a proper return would be 6 per cent. We should not be influenced in naming a fair return by our views upon the subject of taxation. Our function is to name a fair return without regard to how much of it the Government may decide to take from time to time in taxes.

During the early stages of our deliberations, I was impressed with the notion that in making reductions we should give preferential consideration to a selected list of so-called basic commodities. Further consideration developed objections to this course which to my mind are convincing. It appears impossible at this time to select a list of so-called basic commodities to which reduction could consistently and lawfully be limited. We can not determine upon specific basic commodities which do not so relate in a competitive way to other commodities, as to make impossible a reduction of the rates on those selected and not on others. The result of applying reductions to a particular list would be to deluge us with complaints from shippers of related commodities who would make charges of discrimination which we would be required to sustain. The effect would be to create intense confusion and discontent and to work great injustice. Concluding that there is a prospective surplus available for rate reductions, I know of no theory on which that surplus, resulting largely from hauling certain traffic, can be made the basis for a finding with

respect to the reasonableness of rates on other traffic. If we were to select a list, our difficulties would not be reduced. Some situations are more acute than others. Different commodities and different conditions require different treatment. Some rates are not high enough; others are too high in varying degrees. We would not do justice in requiring horizontal reductions limited to particular commodities. If I were persuaded of the practicability of limiting reductions to the so-called basic commodities, I would favor an announcement of the amount available for rate reduction and have a further hearing upon the question as to how specific application should be made. The present record is not sufficient to indicate what selections should be made. If further hearings were to cause delay, the result might be more harmful than to proceed as the report prescribes.

Remaining instances of maladjustment should be corrected upon specific applications. Carriers should not regard our general conclusions as dealing correctly in detail with all situations. Their further consideration in the light of constantly changing conditions, with which they are more familiar than we can be, should lead to sounder treatment than we have directed to be applied.

LEWIS, Commissioner, dissenting:

The decision of the commission that rates be reduced is unanimous. My dissent is limited to what appears to me to be unjustified economic waste. The times demand adjustments—even radical adjustments—rather than horizontal reductions, and the record in this case justifies such action.

The margin available for reductions or adjustments that may be required by us is not sufficient, if spread over the entire freight traffic, to give to the country the relief and to business and industry the stimulation that is urgently needed. A 10 per cent reduction will, in the case of many commodities, have no perceptible influence in lowering costs of living, stimulating industry, ameliorating economic conditions or bringing us into more favorable and equitable relationships at home and abroad.

It may be said that, measured by the standards of value or service, many commodities are not now bearing too great a share of the transportation burden. Rates in some instances, and on certain services, might be increased rather than lessened as the result of a more detailed study than is afforded in this investigation. The horizontal lowering of transportation charges in many instances will, so far as the public interest is concerned, mean nothing. In some in-

stances it may be said to be detrimental for it will only serve to transfer to profits of private business revenues which the carriers would much better employ in improvement and extension of the public facility of transportation and in extensive employment incidental thereto, or prevent us or them from affording reductions to meet new conditions.

On the other hand there are commodities and raw materials that are basic to existence, to industry, and to readjustment, on which transportation charges are relatively and absolutely too high. They are out of proper relationship to the selling prices of the commodities and constitute not only maladjustments at home but most unfavorably affect us in world competition. Making these commodities and materials more cheaply available to consumers and manufacturers would contribute to reduction of costs of living, relief in the housing situation, maintenance of productivity of the soil, increased employment, and stimulation of buying. The combined effect of such changes could reasonably be expected to increase traffic and speed an earlier adjustment of other or all transportation charges to proper relationships with new levels of values.

The fullest possible measure available for reductions should be applied in conformity with the guiding principles which were the foundation of our order in *Rates on Grain, Grain Products, and Hay*, 64 I. C. C., 85, and of our recommendations in *National Live Stock Shippers' League v. A., T. & S. F. Ry. Co.*, 63 I. C. C., 107, on which the carriers acted, and which the carriers accepted as the basis for their voluntary 10 per cent reduction in rates on products of the soil.

Cox, *Commissioner*, dissenting:

To the extent that a measure of relief has been granted to the public generally in the disposition of this case I fully concur, but I am not in full accord with the manner and measure of the reduction as set forth. I desire to refer briefly to existing conditions in the light of the record before us.

It is unnecessary for us at this time to review the causes which have brought about the present situation, nor is there place in the record for criticism of what has happened in the past except in so far as it may serve as a guide for the present or future. Neither is it necessary, except in passing, to refer to the fact that the carriers were not permitted to realize the present rate for transportation service at a time when the traffic was in a better position to bear the burden than at the present time, but the question which concerns us most is: What is our duty in the light of the present record?

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Our railroads are national institutions and are vitally necessary to the industrial prosperity of the nation, but if our transportation systems fail to provide a comprehensive and efficient service to the people of our country at a rate which will bear a proper relation to the value of the service and price of the commodity, then must all industry suffer in the same proportion as our transportation systems fail to measure up to their opportunity and responsibility.

Statisticians, who have made a careful study of the trend of industrial activities covering a period of a century or more, have proved, beyond all question of doubt, that following a period of abnormal inflation of commodity values, in the process of a return to a normal condition, new levels of values are established which are invariably higher than the old, but in the establishment of new levels careful consideration must be given to the economic conditions, both home and abroad, and we should continually keep before us our need of foreign markets for the products of our farms and factories.

The productivity of the soil is one of our country's greatest assets, and the prosperity of our agricultural interests is reflected in all other lines of industry, including transportation. Agriculture was one of the first industries to feel the depression in 1921. Prices of farm products fell, in some instances, far below pre-war levels.

The rapid and marked decline in prices without similar reductions in production and distribution costs created a serious situation, and resulted in a heavy falling off in the purchase of manufactured articles of all kinds, thereby contributing largely to the general business depression, and freight and passenger traffic has receded far below normal levels. Nothing, perhaps, is more desirable at this time than a return to normalcy, and adjustments must be made which will tend to stimulate the agricultural and industrial situation which has been in a state of depression since the readjustment period began.

I do not concur in the views of the majority that rates on all commodities should be reduced at this time and it is a matter of record that many commodities at present rate levels are not bearing more than a just share of the transportation burden.

It is my judgment that the amount available for reduction at this time should be applied to agricultural products, raw materials and basic commodities which are essential to the reestablishment of industry, the reemployment of labor, and which could at once be reflected in reduced living costs.

Passenger fares at present rate levels have been reflected in a marked falling off in traffic. No further argument should be necessary than the fact that passenger travel is over seven billions of revenue passenger-miles below normal. Representatives of industrial and

commercial interests have made requests for a reduction in rates repeatedly, and they are unanimous in their opinion, in which I fully concur, that the issuance of a mileage book at a reduced rate of fare would not only stimulate travel but would also increase the present revenues of the carriers.

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No. 12620.

NATIONAL ASSOCIATION OF WASTE MATERIAL
DEALERS, INCORPORATED,

v.

ANN ARBOR RAILROAD COMPANY ET AL.

Submitted February 21, 1922. Decided April 3, 1922.

Fifth-class rating and rates applicable on scrap rubber, in carloads, in official territory found unreasonable to the extent they exceed sixth class.

Francis B. James, Charles M. Haskins, and H. F. Masman for complainant.

Parker McCollester for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MEYER, CAMPBELL, AND COX.

Cox, Commissioner:

Exceptions were filed by defendants to the report proposed by the examiner and the case was orally argued.

The complaint in this proceeding seeks the establishment of sixth-class rating and rates in official territory on scrap rubber, carloads. The fifth-class rating now applies under the official classification on—

RUBBER:

Scrap rubber:

Tires, used or worn out:

Mounted or not mounted, loose or in packages, c. l., min. wt. 30,000 pounds.

Scrap rubber, n. o. i. b. n., see note 2:

• • • • •

Loose or in packages, c. l., min. wt. 30,000 lbs.

Note 2.—Ratings apply on Rubber Scraps (other than crude rubber) or Old Worn-out Rubber Boots, Shoes, Belting, Clothing, Clothes Wringer Rollers, Hose, Mats, Matting, Packing or similar old worn-out rubber articles (other than tires), or scraps or pieces of cloth coated or impregnated with rubber, having value only for reclamation of raw materials.

Scrap rubber is consumed by industries engaged in reclaiming its rubber content. The product, known commercially as reclaimed rubber or rubber shoddy, is sold in competition with crude rubber, both being adapted to the same uses. Crude rubber is rated fourth class, minimum 40,000 pounds. This rating was established in 1919, the rule 26 rating previously applicable having been condemned as unreasonable in *Goodyear Tire & Rubber Co. v. A., C. & Y. Ry. Co.*, 53 I. C. C., 389. Reclaimed rubber is rated fifth class, the same as scrap rubber, but with a minimum of 40,000 pounds.

At the time of the establishment of the fifth-class rating on scrap rubber in 1887 the uses to which rubber was put were limited. With the advent, first of the bicycle in the early nineties, and later of motor-propelled vehicles, a tremendous impetus was given to the rubber industry. The crude-rubber importations into the United States increased from 28,649,446 pounds in 1887 to 566,546,136 pounds in 1920. From 1913 to 1917 the increase in consumption throughout the world amounted to 127 per cent. The production during the same period increased 147 per cent, leaving a surplus of 20 per cent. This condition is attributed to the fact that the output of the plantations greatly increased and also that Germany and Russia, theretofore large consumers, were either forced out or withdrew from the market as a result of the World War. What the future will bring forth is, of course, problematical, but there is on hand a supply equal to the world's needs for at least a year, and, with present conditions continuing, for five years. As a result of this overproduction, or underconsumption, prices declined materially. India rubber which sold as high as \$1.058 per pound in 1911, 54 cents in 1914, and 57.9 cents in 1916, brought 40.2 cents in 1919. The prices in 1921 were still lower, plantation rubber bringing from 15 to 15.5 cents in July of that year, and Pará rubber, 16 cents. In July, 1910, the latter sold for \$2.39. In other words, unlike most other raw materials, crude rubber, even during the war period, declined in price, and the market has not since approached the pre-war level. Keeping in mind the fact that there is at present an overproduction and a consequent surplus of crude rubber, it may be presumed that there is little likelihood of an appreciable upward trend in the near future, although somewhat higher prices are probable as the present are said to be below the cost of production. The foregoing is important, due to its bearing upon scrap rubber, the sale of which is largely contingent upon the market of its product, reclaimed rubber.

Of the scrap rubber shipped by complainant's members approximately 72 per cent consists of pneumatic automobile tires, 10 per cent of boots and shoes, and 2.5 per cent of inner tubes. The prices

of these grades, as well as of all others, steadily declined, with some minor fluctuations, during the years 1910 to 1921, inclusive, as indicated in the following table compiled from complainant's exhibits. The figures shown are the lowest and highest "consumers' prices" during the period stated and are in cents per pound:

Period.	Boots and shoes.		Auto tires.		No. 1 inner tubes.	
	Low.	High.	Low.	High.	Low.	High.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
1910-1913.....	8½	10½	7½	10½	.....	.....
1914 ¹	6½	7	4½	4½	24	25
1915.....	7	8	4½	5½	21	25½
1916-1920.....	6½	11	2½	7½	14½	30
1921 ²	3½	5½	1	2½	6	10½

¹ For October only.
² For first seven months.

Dealers' prices were somewhat lower, ranging during the first seven months of 1921 from 2½ to 3½ cents for boots and shoes, ¾ to 1½ for mixed auto tires, and 3½ to 6½ for No. 1 inner tubes.

The following is a comparison, made by complainant, of the values of reclaimed rubber and the three principal grades of scrap rubber, the prices being as of July 1 of the years indicated, in cents per pound:

	1918		1919		1920		1921	
	Low.	High.	Low.	High.	Low.	High.	Low.	High.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Standard shoe reclaim.....	.....	15½	14½	15½	15½	16½	11½	12½
Scrap rubber (boots and shoes).....	8½	8½	7½	8	7	7½	3½	4
Floating stock.....	.....	.....	35	40	35	40	14	16
Scrap rubber (No. 1 inner tubes).....	24½	25	24	25	15½	16	6	6½
Auto-tire reclaim.....	.....	.....	16½	17½	16	17	11½	13½
Scrap rubber (auto tires).....	5	5½	3½	4	3	3½	1	1½

Complainant compared the assailed rating with the ratings on other scrap or waste materials and on manufactured articles. Commodities such as old rope or twine, waste hair, scrap leather not exceeding declared or agreed value of 3½ cents per pound, oil-cloth scrap, scrap paper, rags, cordage-mill waste, and flax-mill waste, having value only for reclamation or remanufacture, are rated sixth class in the official classification, with minima varying from 24,000 to 30,000 pounds. It appears that the values of most of these articles do not differ materially from that of scrap rubber. Scrap metals other than iron or steel, the value of which usually exceeds that of scrap rubber, are, generally speaking, rated fifth class, minimum 36,000 pounds; some scrap metals, such as nickel, are rated fourth

class. It is possible to pick out of a classification, as both parties here have done, commodities taking higher ratings than other more valuable articles, and vice versa. But value is only one of the elements to be taken into consideration in fixing a rating or rate.

Defendants would have us disregard the present price levels and view the case in the light of the average prices prevailing during the years 1910 to 1920, inclusive, during the greater part of which period the value of some grades of scrap rubber exceeded that of most of the other scrap materials. But the charts submitted by defendants show that since 1911 the price of mixed tires, which constitute the bulk of the shipments, has steadily declined, which is not true of any other scrap material to which attention has been directed. This is an indication that while abnormal conditions, the outgrowth of the war, undoubtedly tended to depress the rubber market like all others, yet these conditions are not wholly responsible for the fact that crude and scrap rubbers are worth less to-day than during the pre-war period; as previously explained, the low values are in part the result of an overproduction.

"Used" tires under the classification take the fifth-class rating, as well as those which are "worn out." There is no limitation such as is imposed in connection with other scrap-material ratings, that the commodity has value only for reclamation, remanufacture, or remelting. Used tires may consist of so-called adjustment tires, that is, tires which have not given the guaranteed service and are returned to the dealer for credit. Defendants' witness testified that there are firms engaged in retreading, revulcanizing, or rebuilding such tires, and that men are permitted to sort over and pick out old tires for similar uses. The record indicates, however, that not over 2 per cent of the old tires shipped are used for other than reclamation purposes. For various reasons the practice formerly in vogue of returning adjustment tires to the factories has been discontinued by some manufacturers and the tires are disposed of locally after cutting the bead; other manufacturers concentrate such tires at the centers and return them in carload lots; while to others the return movement is in less than carloads. It is conceded by both parties that adjustment or other tires not worn out are not entitled to the same rate as old worn-out tires having value only for reclamation purposes, but the defendants insist that it is impossible to determine when a tire reaches that stage and therefore that provisions limiting the application of the rating to tires having such value could not be policed unless the tires are so destroyed as to be unfit for further use as tires. Such destruction complainant resists on the ground that the machinery used by the reclaimers for taking the bead off

the tire could not be used if the tires were cut in pieces and therefore tires could not be marketed in that condition.

Complainant points out that the policing difficulties to which the carriers advert are also present in connection with other scrap materials, such as scrap iron and woolen rags, approximately 80 per cent of the latter being clothing. In view of the fact that adjustment tires constitute but a very small percentage of the scrap rubber shipped, the difficulties mentioned should not be given undue consideration. The law prohibits misbilling, and the carriers employ inspectors whose duty it is to see that the tariff regulations are complied with. The ratings on other scrap materials are restricted, as heretofore stated, and no good reason appears for singling out rubber auto tires and subjecting them to different treatment, and incidentally applying to all other scrap rubber the rating in effect on an article admittedly not scrap, more valuable and properly entitled to a higher rate.

The following table constructed from an exhibit introduced by defendants shows fifth-class and sixth-class rates between important originating and consuming points of scrap rubber; also revenue thereunder based on the minimum weight of 30,000 pounds:

	Distance.	Rate.	Revenue per car.	Revenue per car- mile.	Revenue per ton- mile.
New York to Mishawaka, Ind.:	<i>Miles.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Mills.</i>
Fifth class.....	856	59	\$177. 00	20. 7	14
Sixth class.....	856	49. 5	148. 50	17. 3	12
Chicago to Naugatuck, Conn.:					
Fifth class.....	1,100	66	198. 00	19. 8	13
Sixth class.....	1,100	54. 5	163. 50	16. 3	11

An exhibit submitted for complainant covering the movement in 1920 of carloads of scrap rubber between points in official territory shows that the average weight of the 324 cars shipped prior to August 26 was 35,877 pounds, the average haul 488 miles, and the average earnings \$95.92 per car and 19.64 cents per car-mile; and of the 106 cars shipped subsequent to the date mentioned, 34,116 pounds, 421 miles, \$121.62, and 28.84 cents, respectively.

Scrap rubber is desirable traffic from a transportation standpoint. No special equipment or expedited service is required, loss and damage claims are negligible, and the movement is appreciable and fairly constant. Members of the Rubber Association of America, which represents about 90 per cent of those engaged in reclaiming rubber, consumed 230,985,246 pounds of scrap rubber in 1919 and 235,446,597 pounds in 1920.

Reclaimed rubber, a more valuable commodity than scrap rubber, of which it is a product, is rated fifth class. Other scrap materials with which scrap rubber does not compare unfavorably, either in value or from a transportation standpoint, are rated sixth class.

We find that the fifth-class rating and rates governed by the official classification applied by defendants to the transportation of scrap rubber, including tires, in carloads, having value only for reclamation of raw materials, are and will be unreasonable to the extent that they exceed sixth-class rating and rates. An appropriate order will be entered.

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CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

I. & S. 1321. RATES TO, FROM, AND BETWEEN POINTS SOUTH OF OHIO RIVER, INCLUDING THE MISSISSIPPI VALLEY (2). Proposed increase in class and commodity rates to, from, and between points south of the Ohio River. *C. Giessow* for protestant. *E. H. Shauffer* for respondents. Proceeding discontinued April 26, 1922.

I. & S. 1407. PETROLEUM AND PRODUCTS FROM MEMPHIS, TENN., TO LOUISVILLE, KY. Proposed increases on petroleum and products from points west of Mississippi River to Louisville, Ky., and Memphis, Tenn. *F. S. Jackson*, *E. R. Byars*, *A. C. Holmes*, *C. L. Seideman*, *L. W. Witte*, *P. T. McKirahan*, and *H. M. Moon* for protestants. No appearances for respondents. Proceeding discontinued April 26, 1922.

I. & S. 1453. VEHICLES AND VEHICLE BODIES FROM EASTERN POINTS TO TRANS-CONTINENTAL TERRITORY. Proposed change in carload minimum on vehicles and vehicle bodies from eastern points to transcontinental territory. *I. Miller*, *E. G. Payton*, *F. J. Danner*, *W. Morrison*, and *H. B. McNeely* for protestants. *R. H. Countiss*, *F. S. Davis*, and *W. J. Kelly* for respondents. Proceeding discontinued April 26, 1922.

I. & S. 1469. SWITCHING ON NONCOMPETITIVE TRAFFIC AT JAMESTOWN, N. DAK. Proposed increased switching charges at Jamestown, N. Dak. *E. B. Murphy* and *J. H. Canhan* for protestants. *A. A. Overton* for respondent. Proceeding discontinued April 25, 1922.

I. & S. 1471. PETROLEUM AND PRODUCTS FROM SHREVEPORT, LA., AND GROUP POINTS TO NEW ORLEANS, LA., AND SUB-PORTS, FOR EXPORT. Proposed increases in rates on petroleum and petroleum products from Shreveport La., and group points to New Orleans, La., and other ports for export. No appearances for protestants. *A. Rendall*, *C. H. Atherton*, *J. C. Gutsch*, *G. T. Atkins*, *A. J. Lehmann*, *B. H. Stanage*, *J. F. Garvin*, *C. C. P. Rausch*, *H. G. Herbel*, *H. A. Wearer*, and *J. H. Ranham, jr.*, for respondents. *J. P. Schneider* for interveners. Proceeding discontinued May 5, 1922.

I. & S. 1485. COFFEE FROM GULF PORTS TO INTERSTATE POINTS. Proposed increases in rates on coffee from Gulf ports to various destinations. *E. H. Thornton*, *E. P. Byars*, *G. S. Maxwell*, *R. G. Hyett*, *E. Moulton*, and *C. Giessow* for protestants. *A. B. Boyd*, *W. P. Emerson*, *F. A. Leland*, and *W. J. Kelly* for respondents. Proceeding discontinued April 19, 1922.

I. & S. 1495. ALLOWANCE FOR FILL ON STRAIGHT CARLOAD SHIPMENTS OF CALVES. Proposed increased charges on calves, carload, by reason of the denial by the carriers of the usual fill allowance. *B. D. Pelton*, *S. C. Rowe*, and *J. A. Lovell* for protestants. *A. C. Fonda* for respondent. Proceeding discontinued April 11, 1922.

I. & S. 1516. INCREASED RATES ON SLACK COAL FROM WYOMING. Proposed increased rates on coal from Wyoming mines to Crawford, Nebr., and other

points. *E. C. Van Diest* for protestant. *H. H. Holcomb* and *L. H. Lamb* for respondent. Proceeding discontinued May 2, 1922.

I. & S. 1517. REDUCED RATES ON COAL FROM ILLINOIS MINES ON THE I. C. R. R. TO ARKANSAS POINTS ON ST. L. S. W. RY. Proposed reduction in rates on coal from Illinois mines to points in Arkansas. *D. R. Lincoln* for protestant. *B. J. Rowe* for respondents. Proceeding discontinued April 26, 1922.

I. & S. 1520. RESHIPPING RATES ON GRAIN FROM CHICAGO, ILL., TO EASTERN CITIES. Proposed increased reshipping rates on grain from Chicago, Ill., to points east of Buffalo, N. Y., and to Atlantic ports for export. *J. S. Brown* for protestants. *H. W. Beyers*, *H. E. Pierpont*, *S. G. Nethercot*, and *J. A. Farmar* for respondents. Proceeding discontinued May 2, 1922.

I. & S. 1522. LUMBER FROM MISSISSIPPI RIVER POINTS TO CHESAPEAKE & OHIO RAILWAY DESTINATIONS. Proposed increases in rates on lumber from points in Mississippi to points in Kentucky and West Virginia. *B. M. Angell* for protestants. *F. L. Speiden* for respondent. Proceeding discontinued April 15, 1922.

I. & S. 1537. EMPTY WOODEN TRUCK BARRELS FROM NORTH CAROLINA TO SOUTH CAROLINA. Proposed increases in rates on empty truck barrels from points in North Carolina to points in South Carolina. *R. L. Askea* for protestant. *J. W. Perrin* for respondent. Proceeding discontinued May 17, 1922.

11318. PACIFIC GRAIN CO. v. DIRECTOR GENERAL ET AL. Rates on wheat from points in Idaho to Astoria, Oreg. *J. M. Thomas* for complainant. *H. A. Scandrett*, *A. C. Spencer*, *W. A. Robbins*, *Carey & Kerr*, *C. A. Hart*, and *J. F. Finerty* for defendants. Transferred to Special Docket for adjustment, April 10, 1922.

11764. INTRASTATE RATES WITHIN THE STATE OF TEXAS. Intrastate rates allowed by the State commission alleged to create undue and unreasonable preference and prejudice as between persons and localities in intrastate commerce on the one hand and interstate and foreign commerce on the other hand. *J. W. Terry*, *H. M. Garwood*, *E. B. Perkins*, *W. B. Hamilton*, *W. F. Murray*, *G. Thompson*, *R. J. Boyle*, *J. M. King*, *A. C. Fonda*, *J. A. Barwise*, *J. A. Hulin*, *J. T. Bowe*, *W. C. Logan*, *J. B. Payne*, *R. H. Kelley*, *W. G. Crush*, *W. B. Plumb*, *J. B. Shackelford*, *A. H. McKnight*, *J. F. Garvin*, *L. N. Hogsett*, *N. J. Dowlan*, *C. H. Guion*, *H. Booth*, *N. A. Stedman*, *C. W. Owen*, *Terry, Cavin & Mills*, *J. S. Hershey*, *G. H. Muckley*, *J. O. Hamilton*, *J. C. Manghum*, *W. F. Sterley*, *R. Thompson*, *E. E. Dullahan*, *J. A. Brown*, *J. H. Tallichet*, *F. H. Wood*, *C. E. Hollomon*, *G. T. Atkins*, *A. T. Witcher*, and *J. L. Bothwell* for respondents. *C. M. Cureton*, *B. W. Bryant*, *P. Kayser*, *E. H. Thornton*, *F. R. Dalzell*, *C. A. Bland*, *J. L. West*, *U. S. Pawkett*, *E. P. Byars*, *L. F. Daspit*, *E. L. Pierson*, *A. Calhoun*, *W. E. Hawkins*, *T. L. Beauchamp*, *W. LaRoe, jr.*, *M. A. Chambers*, *F. C. Clark*, *F. L. Ruland*, *O. D. Hundred*, *W. M. Maddox*, *H. C. Moran*, *J. R. Davis*, *P. L. Howard*, *J. J. Atkinson*, *W. H. & R. T. Badger*, *F. W. King*, and *E. R. McLean* for protestants. Proceeding discontinued May 2, 1922.

11862. INTRASTATE RATES AND CHARGES IN THE STATE OF MISSOURI. Alleges that because of action of the Public Service Commission of Missouri there now exists and will continue to exist intrastate rates within the State of Missouri that will work undue and unreasonable advantage on intrastate commerce on the one hand and interstate commerce on the other. *C. S. Burg*, *H. E. Heller*, *F. H. Towner*, *T. R. Farrell*, *C. N. Richards*, *M. G. Roberts*, *C. C. P. Rausch*, *W. I. Jones*, *J. J. Coleman*, *R. B. Battey*, and *E. Rigg* for respondents. *C. B. Bee*, *S. C. Bates*, *C. E. Warner*, *F. G. Stadle*, *W. J. C. Kenyon*, *F. C. Taylor*, *F. Willeke*, *E. H. Hogueland*, *C. E. Todd*, and *F. W. Peck* for protestants. Proceeding discontinued May 2, 1922.

11869. **EMPIRE COTTON OIL Co. v. DIRECTOR GENERAL, AS AGENT, ET AL.** Rates on cotton linters from Monticello, Ga., to Lockland, Ohio. *H. L. Brooks* for complainant. *H. Thurtell* for defendants. Transferred to Special Docket for adjustment, April 8, 1922.

11894. **INDIANA RATES, FARES, AND CHARGES.** Investigation as to intrastate rates within the State of Indiana and asks the establishment of intrastate rates, fares, and charges within said State on the same level as authorized by it for transportation between points in Indiana and points in other States. *N. S. Brown, W. C. Maxwell, D. P. Connell, M. R. Waite, F. E. Webster, H. C. Starr, E. R. Oliver, F. S. Reigel, J. D. Wellman, O. B. Sudborough, J. A. van Oadell, L. P. Forbes, O. L. Henry, Beasley, Douthitt, Crawford & Beasley, F. B. Norvill, K. L. Richmond, G. Orcutt, L. P. Day, W. L. Dewey, A. Baker, J. J. Daniels, A. P. Humburg, F. H. Law, and R. D. Hunter* for respondents. *H. B. McNeely, C. G. Hall, R. B. Coapstick, O. R. Livinghouse, C. B. Cardy, O. P. Gothlin, I. Born, C. P. Stewart, W. S. Morrison, S. D. Royse, E. I. Lewis, A. B. Cronk, G. P. Boyle, C. R. Hillyer, P. O. Landers, A. D. Vandergrift, M. J. Parlin, E. L. German, O. M. Bullitt, A. Brandeis, R. L. Callahan, F. M. Crenshaw, H. M. Brouse, H. E. Richter, L. B. Moser, F. L. Watkins, J. Kuntz, E. Stansbury, E. B. Blatzley, D. O. Skillen, W. A. Milne, B. Glascock, W. E. Murchie, G. T. Hitz, J. Wilson, E. C. Handy, J. C. English, J. Flatt, O. E. Halderman, C. E. Palmer, J. Klump, jr., G. Seller, C. M. Kimbrough, E. F. Kitselman, H. E. Fairweather, S. S. Shambaugh, F. R. Hale, G. B. Lockett, W. T. Haymond, E. O. Hervey, L. R. Martin, A. D. Ogborn, G. M. Barnard, J. Waffle, Hosted & Patrick, E. W. Wolfe, W. C. Ball, R. H. Bolman, J. J. Netterville, J. E. Benton, and J. O. Graham* for protestants. Proceedings discontinued April 7, 1922.

11915. **GEORGIA RATES, FARES, AND CHARGES.** Intrastate rates maintained in the State of Georgia on a lower basis than those authorized in Ex Parte 74, causing an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce on the one hand and interstate commerce on the other. *H. Thurtell* and *W. N. McGehee* for respondents. *B. Gilham, T. J. Burke, C. W. Cheers, J. A. von Dohlem, J. K. Hines, J. D. Harvey, and J. E. Grady* for protestants. Proceeding discontinued May 20, 1922.

11916. **INTRASTATE RATES, FARES, AND CHARGES IN THE STATE OF KANSAS.** Intrastate rates maintained in the State of Kansas on a lower basis than authorized under Ex Parte 74, causing an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce on the one hand and interstate commerce on the other. *J. L. Coleman, W. R. Smith, W. J. Black, L. E. Wettling, D. R. Lincoln, C. Taylor, W. W. Brown, L. Burns, J. A. Stewart, J. C. LaCoste, B. M. Bukey, C. I. Long, R. G. Merrick, T. B. Martin, G. W. Hamilton, E. A. Boyd, J. M. Souby, W. R. Smith, and R. C. Prodillon* for respondents. *C. Thorne, P. A. Conway, T. M. Hanrahan, C. M. Reed, A. E. Helm, W. P. Huston, C. E. Warner, B. L. Glover, J. J. Campbell, H. L. McReynolds, W. S. Lynch, A. F. Winn, C. W. Rice, T. A. Welling, E. H. Hogueland, S. A. Smith, C. H. Brooke, B. Needham, J. E. Benton, A. M. Corp, O. W. Mittendorf, Thorne & Jackson, R. W. Moore, M. C. Lysle, and A. B. Hamilton* for protestants. Proceeding discontinued April 1, 1922.

12692. **ÆTNA EXPLOSIVES Co. (INC.) v. P. R. R. Co. ET AL.** Rates on nitrate of soda in bags from Baltimore, Md., to Goes, Ohio. *Strasbourger & Schallek* for complainant. *H. W. Bikle* and *A. Dodson* for defendants. Transferred to Special Docket for adjustment, March 27, 1922.

12777. **ÆTNA EXPLOSIVES Co. (INC.) v. DIRECTOR GENERAL, AS AGENT, ET AL.** Rates on nitrate of soda in bags from North Atlantic ports, Norfolk, Va., and Port Richmond, Pa., to Fayville, Ill., Goes, Ohio, Ætna, Ind., and Ishpeming, 68 I. C. C.

Mich. *Strasbourger & Schallek* for complainant. *R. W. Barrett, R. L. Burnap, J. F. Finerty, W. L. Kinter, A. Dodson, H. W. Bikle, C. Brown, W. J. Larrabee, H. G. Herbel, J. M. Chaney, A. E. Miller, R. H. Widdicombe, and M. B. Pierce* for defendants. Transferred to Special Docket for adjustment, April 10, 1922.

12844. *INVINCIBLE OIL Co. v. K. C. S. Ry. Co. et al.* Rates on one carload of wrought-iron pipe from Shreveport, La., to Cement, Okla. *J. W. Liddell* for complainant. *M. G. Roberts* and *G. H. Muckley* for defendants. Transferred to Special Docket for adjustment, April 17, 1922.

12900. *RED LION BOARD OF TRADE v. M. & P. R. R. Co. et al.* Through routes and joint rates on traffic to and from Red Lion, Pa. *A. S. Olmsted, 2nd*, for complainant. *F. W. Gwoathmey, F. H. Wood, J. R. Bell, C. W. Durbrow, E. Westlake, A. Dodson, H. W. Bikle, T. J. Norton, F. E. Andrews, C. R. Webber, F. G. Dorety, R. J. Hagman, R. L. Burnap, T. J. Freeman, G. Thompson, E. A. Hotchkiss, W. J. Stevenson, H. G. Herbel, J. M. Chaney, D. Upthegrove, J. R. Turney, R. H. Widdicombe, M. B. Pierce, D. L. Younger, A. C. Spencer, G. H. Smith, H. A. Scandrett, J. M. Souby, W. A. Northcutt, A. P. Humburg, M. G. Roberts, W. L. Kinter, O. H. Nance, J. F. Dalton, J. W. Allison, and C. J. Rizey* for defendants. Complaint satisfied. Dismissed April 26, 1922.

13013. *FITTS v. DIRECTOR GENERAL, AS AGENT.* Rates on ice from Sylvan Beach, N. Y., to McLean, N. Y. *D. J. Sims* for complainant. *R. McKenna* for defendants. Transferred to Special Docket for adjustment, March 20, 1922.

13102. *PRODUCERS REFINING Co. v. A., T. & S. F. Ry. Co. et al.* Rates on fuel, refined and light oils from Gainesville, Tex., to Oklahoma City, Ponca City, and Cushing, Okla. *A. C. Holmes* for complainant. *C. S. Burg, C. J. Norton, and F. E. Andrews* for defendants. Dismissed on request of complainant, April 26, 1922.

13133 and Subs. 1-8. *NORTH STAR OIL & REFINING Co. (LTD.) v. DIRECTOR GENERAL, AS AGENT, et al.* Rates on petroleum and products from various points in the United States to various points in Canada. *C. D. Chamberlin* for complainants. *C. D. Mahaffie* for defendants. Dismissed on request of complainants, April 26, 1922.

13228. *DAVIS GROCERY Co. v. A. & W. P. R. R. Co. et al.* Rates on one carload of sugar from Port Wentworth, Ga., to Montgomery, Ala. *M. M. Caskie* for complainant. No appearances for defendants. Transferred to Special Docket for adjustment, April 10, 1922.

13268. *NATCHEZ CHAMBER OF COMMERCE et al. v. I. C. R. R. Co. et al.* Rates on sugar from New Orleans, La., to Natchez, Miss. *B. F. Martin* for complainants. *W. W. Barrow* for interveners. *C. J. Rizey* and *A. P. Humburg* for defendants. Dismissed on request of complainants, April 26, 1922.

13291. *VIM MOTOR TRUCK Co. v. DIRECTOR GENERAL, AS AGENT.* Demurrage and track storage charges on one carload of freight motor trucks at Richmond, Va. *G. J. Edwards, jr.*, for complainant. *C. R. Webber* and *C. D. Mahaffie* for defendants. Dismissed, on request of complainants, April 26, 1922.

13310. *DAVISON CHEMICAL Co. v. DIRECTOR GENERAL, AS AGENT, et al.* Rates on structural steel from Pottstown, Pa., to Greenville, N. J. *P. S. Ball* for complainant. *J. F. Finerty* and *W. L. Kinter* for defendants. Complaint satisfied. Dismissed April 26, 1922.

13380. *REPUBLIC COAL Co. v. C., B. & Q. R. R. Co., et al.* Rates on one carload of soft coal from West Frankfort, Ill., to La Crosse, Wis. *S. B. Houck* for complainant. *R. H. Widdicombe* and *K. F. Burgess* for defendants. Complaint satisfied. Dismissed April 26, 1922.

13385. *INTERNATIONAL AGRICULTURAL CORP. v. DIRECTOR GENERAL, AS AGENT.* Rates on phosphate rock from Prairie, Fla., to Florence, Ala. *J. W. White* for

complainant. *J. F. Finerty* for defendants. Transferred to Special Docket for adjustment April 17, 1922.

13415. NORTHWESTERN PENNSYLVANIA COAL OPERATORS ASSO. *v.* B. & L. E. R. R. Co. ET AL. Rates on coal from Pennsylvania mines to points in New England. *C. Donley* for complainant. *W. W. Meyer, C. Brown, M. B. Pierce, C. F. Baird,* and *J. V. Styers* for defendants. Complaint satisfied. Dismissed April 26, 1922.

13455. MICHELMAN & GORDON IRON WORKS *v.* C. R. R. Co. OF N. J. ET AL. Demurrage charges on one carload of steel beams at Brooklyn, N. Y. *E. A. Hodgkinson* for complainant. *W. L. Kinter* for defendants. Complaint satisfied. Dismissed April 26, 1922.

13473. SHERER-GILLETT Co. *v.* DIRECTOR GENERAL, AS AGENT, ET AL. Rates on two less-than-carload shipments of grocers' counters in same car from Charleston, W. Va., to Cannelton, W. Va. *J. P. Campbell* for complainant. *C. Brown* and *J. F. Finerty* for defendants. Dismissed, on request of complainant, April 26, 1922.

13519. EAGLE IRON WORKS Co. *v.* P., C., C. & ST. L. R. R. Co. Rates on rough lumber from Martinsville, Ind., to Terre Haute, Ind. *O. P. Gothlin* for complainant. No appearances for defendant. Dismissed, on request of complainant, April 26, 1922.

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5060 (Sub-Nos. 14, 26, 33, 37, and 50), 5200, and 5200 (Sub-No. 1). **EMERY-BIRD-THAYER DRY GOODS Co. v. C., R. I. & P. Ry. Co. and WHEELER-MOTTER MERCANTILE Co. v. A., T. & S. F. Ry. Co.** April 26, 1922. Reparation for \$2,311.31, on shipments of cotton piece goods originating in New England and the South from points on the Mississippi River to points on the Missouri River, on account of unreasonable rates.

7540 and 7540 (Sub-Nos. 1 to 6.). **GUILFORD LUMBER MFG. Co. v. S. Ry. Co.** April 26, 1922. Reparation for \$4,947.30, on shipments of glass, from points in Pennsylvania, Ohio, West Virginia, and New York to destinations in North Carolina, on account of unreasonable rates.

7929. **PILCHER HARDWARE Co. v. P. & L. E. R. R. Co.** April 26, 1922. Reparation for \$3.01, on shipment of nails, wire, wire fence, and staples from Monessen, Pa., to Ida Grove, Iowa, on account of unreasonable rates.

9971. **NATIONAL POLE Co. v. A., T. & S. F. Ry. Co.** April 26, 1922. Reparation for \$12,804.64, on shipments of cedar poles and piling from points in Washington, Oregon, Idaho, Montana, and British Columbia to points in various States, on account of unreasonable rates.

10016. **MOHR & SONS v. N. E. S. S. Co.** April 26, 1922. Reparation for \$1,486.52, on shipments of zinc plate from Plymouth and Framingham, Mass., to Pacific coast points, on account of unreasonable rates.

10274. **WADHAMS OIL Co. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$827.77, on shipments of oils from points in Kansas and Oklahoma to Milwaukee, and Racine, Wis., on account of unreasonable rates.

10452, 10452 (Sub-Nos. 1 to 8), and 10497. **FRICK-REID SUPPLY Co. v. DIRECTOR GENERAL, and ROXANA PETROLEUM Co. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$1,645.46, on shipments of wrought-iron pipe from points in Oklahoma to points in Texas, on account of unreasonable rates.

10659. **UNITED IRON WORKS Co. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$77.56, on shipments of iron pipe fittings from Okmulgee, Okla., to Carrollton, Mo., and East Fort Madison, Ill., on account of unreasonable rates.

10966 and 11008. **SOUTHERN CARBON Co. v. A. & L. M. Ry. Co., and SOUTHERN CARBON Co. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$5,477.98, on shipments of gasoline from Fairbanks and Spyker, La., to Toledo, Ohio, on account of unreasonable rates.

11087. **CERTAIN-TEED PRODUCTS CORP. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$9,359.92, on shipments of asphalt from Mereaux, La., to East St. Louis, Vandalia, Marseilles, and Chicago, Ill., on account of unreasonable rates.

11134. **JONES & LAUGHLIN STEEL Co. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$437,200.46, on shipments of iron ore and other commodities

to and from the plant of the complainant at Woodlawn, Pa., on account of unreasonable and unduly prejudicial rates.

11139. **TEX. CARNEGIE STEEL ASSO. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$6,697.28, on shipments of cold-rolled or drawn steel bars, bar iron (polished), and shafting from Beaver Falls, Pa., and Cumberland, Md., to Galveston, Tex., on account of unreasonable rates.

11283. **MIAMI COPPER CO. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$1,689.49, on shipments of pine oil from Pensacola, Fla., to Miami, Ariz., on account of unreasonable rates.

11298. **PARKERSBURG RIG & REEL CO. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$1,752.62, on shipments of bull-wheel arms, cants, and pins, and wooden tanks, from Tulsa, Okla., to Texas destinations, on account of unreasonable and unduly prejudicial rates.

11427. **MICHIGAN BUILDERS' SUPPLY CO. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$560.65, on shipments of coal from points in Pennsylvania to Detroit, Mich., on account of unreasonable rates.

11525. **PHOENIX TRAFFIC BUREAU v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$7,985.86, on shipments of fruits and vegetables from Los Angeles, Calif., to Phoenix, Ariz., on account of unreasonable rates.

11547. **PILLSBURY FLOUR MILLS CO. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$15,665.80, on shipments of flour from Minneapolis, Minn., and Omaha, Nebr., to points in California, Arizona, and New Mexico, on account of unreasonable rates.

11617. **DU PONT DE NEMOURS & CO. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$667.51, on shipments of sulphuric and other acids from Gray's Ferry (Philadelphia), Pa., to Arlington, N. J., on account of unreasonable rates.

11682. **SELMA CHAMBER OF COMMERCE v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$2,364.53, on shipments of sugar from New Orleans, La., to Selma, Ala., on account of unreasonable rates.

11773. **CAREY MFG. CO. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$15,495.20, on shipments of asphalt from Mereaux, La., to Lockland and Carthage, Ohio, on account of unreasonable rates.

11821. **SIoux CITY BRICK & TILE CO. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$1,376.36, on switching brick between points within the switching limits of Sioux City, Iowa, on account of an unreasonable rates.

11873. **COLLINS NORTHERN ICE CO. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$3,842.03, on shipments of ice from and to points in Michigan, account of unreasonable rates.

12035. **NATIONAL REFINING CO. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$5,355.56, on shipments of petroleum from Beattyville, Ky., to Findlay, Ohio, on account of unreasonable rates.

12126. **PARKERSBURG RIG & REEL CO. v. DIRECTOR GENERAL.** April 26, 1922. Reparation for \$481.48, on shipments of steel blocks and shafts from Parkersburg, W. Va., to Eastland and Ranger, Tex., on account of unreasonable rates.

NOTE.—The amount of reparation awarded in the above cases aggregates \$539,075.80.

TABLE OF COMMODITIES.

[Numbers in parentheses after citations indicate where commodity is considered.]

ACID, PICRIC, WET. Wilmington, Del. Delivery and demurrage charges, 419.

AGRICULTURAL PRODUCTS. Reduced rates, 676 (716).

ALCOHOL. New Orleans and Harvey, La., to Kansas City and St. Louis, Mo., Minneapolis, Minn., Cincinnati, Ohio, East St. Louis, Chicago, and Freeport, Ill., Indianapolis, Ind., and Milwaukee, Wis., 389.

ALKALI PRODUCTS. Reduced rates, 676 (726).

ALUM. Chattanooga, Tenn., to Lodi, N. J., 333.

ALUMINUM, SCRAP. Texas, Oklahoma, and Arkansas to Chicago, Ill., and St. Louis, Mo., 115.

AMMONIATES. Reduced rates, 676 (719).

APPLES:

Chelan, Wash., to Dallas, Tex., stored and forwarded to El Paso, Tex., 135.

Deming, N. Mex., from Monitor and Wenatchee, Wash., 277.

ASPHALT:

Missouri, Kansas, Oklahoma, and Arkansas to Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Canada, 471.

Reduced rates, 676 (712).

ASPHALTUM. Missouri, Kansas, Oklahoma, and Arkansas to Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Canada, 471.

ASPHALTUM, PETROLEUM. Missouri, Kansas, Oklahoma, and Arkansas to Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Canada, 471.

BAGS, BURLAP. Central territory from St. Louis, Mo., East St. Louis, Ill., and upper Mississippi River crossings, 587.

BAGS, COTTON-PICKING. Southern classification territory. Rating, 623.

BAGS, GUNNY. Central territory from St. Louis, Mo., East St. Louis, Ill., and upper Mississippi River crossings, 587.

BARRELS, EMPTY SLACK OR TIGHT WOODEN. St. Louis, Mo., to Evansville, Ind., Louisville, Ky., and Cincinnati, Ohio, 645.

BED PARTS, STEEL. Chicago, Ill., to Tacoma, Wash., 211.

BEER. Duluth, Minn., to East Dubuque and Fulton, Ill., 315.

BELTING, RUBBER, SCRAP. Official territory. Rating, 748.

BILLETS, STEEL. Hammond, Ind., to New York, N. Y., for export, 370.

BLOCK, CONDENSING, RADIAL CHIMNEY, SEGMENT, AND SILO. General brick case, 213.

BOARD, BOX AND PAPER. Reduced rates, 676 (725).

BOARDS, FLOOR, AUTOMOBILE. Detroit, Mich., to Fort Worth, Tex., 325.

BOARDS, FLOOR, UNTRIMMED. St. Louis, Mo., to Tarrytown, N. Y., 279.

BOARDS, RUNNING, AUTOMOBILE. Detroit, Mich., to Fort Worth, Tex., 325.

BOARDS, RUNNING, UNTRIMMED. St. Louis, Mo., to Tarrytown, N. Y., 279.

BOARDS, TOE, AUTOMOBILE. Detroit, Mich., to Fort Worth, Tex., 325.

BOARDS, TOE, UNTRIMMED. St. Louis, Mo., to Tarrytown, N. Y., 279.

BOILERS:

Camas, Wash., and West Linn, Oreg., from points east of the Missouri River, 631.

Parkersburg, W. Va., to St. Louis, Mo., diverted or reconsigned to Olden and Ranger, Tex., 151.

BOLTS, EXCELSIOR. Chattanooga, Tenn., from Cohutta, Ga., and McDonald, Summit, and Tyner, Tenn., 165.

BOOTS, RUBBER, SCRAP. Official territory. Rating, 748.

BOBAX. Reduced rates, 676 (726).

BRICK:

Danville, Ill., to East St. Louis and Madison, Ill., 455.

Divisions, 375 (383).

General brick case, 213.

Reduced rates, 676 (712).

BRICK ARTICLES. Danville, Ill., to East St. Louis and Madison, Ill., 455.

BRICK, COMMON, FACE, AND FIRE. General brick case, 213.

BRICK, FLINT. Boston, Mass., New York, N. Y., and Baltimore, Md., to Silica, East Liverpool, and Laughlin, Ohio, 146.

BRICK, PAVING. General brick case, 213.

BUILDING MATERIALS. Reduced rates, 676 (712).

BURIAL GOODS. Reduced rates, 676 (726).

BUTTER. Reduced rates, 676 (717).

BUTTER, PEANUT. Reduced rates, 676 (717).

CAKE, COPRA. Rolling Fork, Miss., to New Orleans, La., 352.

CAKE, COTTONSEED AND PEANUT. Reduced rates, 676 (717).

CANDY. Reduced rates, 676 (726).

CANNED GOODS. Reduced rates, 676 (718).

CANS, TIN:

Cragin, Ill., to Stoughton, Wis., 307.

Reduced rates, 676 (726).

CANVAS, TENT. Kansas City, Mo., from Army camps, 40.

CAPS, BLASTING. Port Ewen, N. Y., to North Birmingham, Ala., 264.

CAPS, BLASTING, ELECTRIC. Port Ewen, N. Y., to North Birmingham, Ala., 264.

CAPS, PAPER BOTTLE-NECK. Vineland, N. J., to Los Angeles, Calif., 155.

CAPS, SHEET-METAL. Cincinnati, Ohio, to Pacific coast points, 305.

CARRIERS, AUTOMOBILE-TIRE. Detroit, Mich., to Flint, Mich., 281.

CASINGS, SHEET-METAL. Cincinnati, Ohio, to Pacific coast points, 305.

CATTLE, BEEF. Wilson, Okla., to Fort Worth, Tex., 303.

CATTLE, STOCK. Kansas City, Mo., to Oklahoma City, Okla., 45.

CEMENT:

Cape Girardeau, Mo., to Fisher, Ark., reconsigned to Little Rock, Ark., 635.

Divisions, 375 (383).

Reduced rates, 676 (712).

CEREAL PRODUCTS. Arizona, 118.

CEREALS. Arizona, 118.

CHATS. Reduced rates, 676 (712).

CHAUTAUQUA OUTFITS. See OUTFITS, CHAUTAUQUA.

CHEESE. Reduced rates, 676 (717).

CLASS AND COMMODITY RATES:

Chicago, Ill., to South Atlantic and Gulf ports, destined to Pacific coast, via Panama Canal, 74.

Memphis, Tenn., to Birmingham, Ala., 108.

CLASS RATES. Canada to and from United States. Express, 20.

CLAY:

Danville, Ill., to East St. Louis and Madison, Ill., 455.

Reduced rates, 676 (725).

CLAY, FILTERING. Ardmore, S. Dak., to Omaha, Nebr., and Kansas City, Mo., 545.

CLAY PRODUCTS:

Danville, Ill., to East St. Louis and Madison, Ill., 455.

General brick case, 213.

CLOTHING, RUBBER, SCRAP. Official territory. Rating, 748.

COAL:

Divisions, 375 (383).

Illinois to Iowa, Wisconsin, and Nebraska, 17.

Reduced rates, 676 (709).

Rock Springs and Kemmerer districts, Wyo., to Utah, 254.

Seelyville and Big Vein, Ind., to Rialto and Crescentville, Ohio, 479.

Utah to Salt Lake City and Midvale, Utah, 118.

COAL, ANTHRACITE. Dunmore, Pa., to Chicago, Ill., 199.

COAL, BITUMINOUS:

Brazil district, Ind., to Brazil, Ind., 295.

Clinton and Brazil districts, Ind., to West Montezuma, Brazil, and Terre Haute, Ind., 435.

Illinois mines to Arkansas, Louisiana, and Texas, 1.

Kentucky, West Virginia, Virginia, and Tennessee mines to Indiana and Illinois, and St. Louis, Mo., 29.

Linton and Princeton districts, Ind., to Aurora and Frankton, Ind., 349.

Logootee, Ind., from Montgomery and Cannellburg, Ind., 443.

O. & K. Junction, Ky., to Cincinnati, Ohio, and central and western territories, 205.

Ohio mines to Illinois, Indiana, Michigan, Missouri, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin. Divisions, 499.

Salt Lake City, Utah, from Standardville, Cameron, Rains, and Sunnyside, Utah, 118.

West Clinton, Ind., to Iowa and Nebraska, via Chicago, Ill., and Ottumwa, Iowa, 285.

West Virginia. Car distribution, 167.

Wheatland, Ind., to Vincennes, Ind., 443.

COCONUTS. Reduced rates, 676 (718).

COFFEE. Reduced rates, 676 (726).

COKE. Reduced rates, 676 (709).

CONDUIT, CLAY AND SHALE. General brick case, 213.

CONTAINERS, BEVERAGE. Reduced rates, 676 (726).

COOPS, POULTRY, K. D. Dyer, Tenn., to Cincinnati, Ohio, 656.

CORN, BROOM. Reduced rates, 676 (718).

COTTON:

Arkansas to Helena, Ark., concentrated, compressed, and reshipped to eastern mill points and Gulf ports, 637.

Guthrie, Okla., from various points, compressed and reshipped to Houston, Tex., 299.

COTTON—Continued.

Louisiana to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports, 611.

Oklahoma City, Okla., from various points, compressed and reshipped to New Orleans, La., 299.

Reduced rates, 676 (717).

Weleetka, Okla., from various points, compressed and reshipped to various destinations, 299.

COTTON SEED. Reduced rates, 676 (717).

COTTONSEED PRODUCTS. Reduced rates, 676 (725).

CRATE MATERIAL. Dyer, Tenn., to Cincinnati, Ohio, 656.

CREAM :

Concordia, Kans., to Crete, Nebr., 319.

Reduced rates, 676 (724).

DAIRY PRODUCTS. Reduced rates, 676 (724).

DRYERS. Camas, Wash., and West Linn, Oreg., from points east of the Missouri River, 631.

DUST, SHALE. West Frankfort, Ill., to Christopher and Sesser, Ill., 584.

EARTHENWARE, PLUMBERS. Reduced rates, 676 (726).

EGGS. Reduced rates, 676 (717).

EGGS, FROZEN. Reduced rates, 676 (718).

ENGINES. Oil City, Pa., to St. Louis, Mo., diverted or reconsigned to Ranger, Tex., 151.

ENGINES, MARINE STEAM-TURBINE. Portland, Oreg., from Trenton, N. J., and Schenectady, N. Y., 195.

EXPLOSIVES :

Reduced rates, 676 (726).

Wilmington, Del. Delivery and demurrage charges, 419.

FATS. Reduced rates, 676 (726).

FELDSPAR. Reduced rates, 676 (726).

FERTILIZER. Reduced rates, 676 (719).

FERTILIZER MATERIALS. Reduced rates, 676 (719).

FISH. Canada to and from United States, 20.

FITTINGS, IRON PIPE. Huff, Pa., to Fort Worth, Tex., diverted or reconsigned to Ranger, Tex., 151.

FLASKS, IRON-FOUNDRY. Chicago Heights, Ill., to Oakland, Calif., 149.

FLOWERS, PYRETHRUM. Baltimore, Md., from Seattle and Tacoma, Wash., 292.

FOREST PRODUCTS :

Boston, Ind. Reconsignment, 161.

Oregon, Washington, Idaho, and Montana to eastern destinations. Minima, 98.

Reduced rates, 676 (715).

Washington to Idaho, Utah, and Colorado, 659.

FRUIT :

Chicago, Ill. Switching, 89.

Reduced rates, 676 (717).

FRUITS, FRESH. Minnesota, North Dakota, South Dakota, Iowa, and Nebraska. Rating, 401.

FURNACES, CAST IRON, PIPELESS. Cincinnati, Ohio, to Pacific coast points, 305.

FURNITURE :

Burlington, Iowa, from North Carolina and Virginia, 267.

Reduced rates, 676 (726).

GASOLINE:

Little Rock, Ark., from Cushing, Pemeta, Oilton, and Blackwell, Okla., 77.

Reduced rates, 676 (720).

GENERATORS. Camas, Wash., and West Linn, Oreg., from points east of the Missouri River, 631.

GLASS. Reduced rates, 676 (726).

GLASSWARE. Reduced rates, 676 (726).

GRAIN:

Minneapolis, St. Paul, Minnesota Transfer, and Duluth, Minn., and Itasca and Superior, Wis., to trunk line territory and New England. Proportional rates, 665.

Reduced rates, 676 (717).

Schuyler, Nebr. Transit privileges, 550.

GRAIN PRODUCTS:

Minneapolis, St. Paul, Minnesota Transfer, and Duluth, Minn., and Itasca and Superior, Wis., to trunk line territory and New England. Proportional rates, 665.

Reduced rates, 676 (717).

GRAINS, COARSE. Minneapolis, St. Paul, Minnesota Transfer, and Duluth, Minn., and Itasca and Superior, Wis., to trunk line territory and New England. Proportional rates, 665.

GRANITE. Reduced rates, 676 (726).

GRAVEL:

Hattiesburg, Miss., to Beaumont, Tex., 321.

Reduced rates, 676 (712).

Wolcottville, Ind., to Chicago switching district, 92.

GREASE. Reduced rates, 676 (726).

GREASE, PETROLEUM LUBRICATING. Newark, N. J., to Charlotte, N. C., and Atlanta, Ga., 477.

GROCERIES. Reduced rates, 676 (723).

GUM, CHEWING. Reduced rates, 676 (726).

HAY:

Arizona, 118.

Dinwiddie, Ind., to Memphis, Tenn., 159.

Forestburg, S. Dak. Car distribution, 541.

Reduced rates, 676 (717).

HORSES. Texas to Natchez, Miss., 130.

HOSE, RUBBER, SCRAP. Official territory. Rating, 748.

HULLS, COTTONSEED. Reduced rates, 676 (717).

ICE:

Chicago, Ill., from Trevor, Wis., and Lake Marie (Antioch), Ill., 309.

Reduced rates, 676 (726).

IMPLEMENTS, AGRICULTURAL. Reduced rates, 676 (726).

INSECTICIDES. Reduced rates, 676 (726).

IRON. Reduced rates, 676 (711).

IRON, BAR. Fort Wayne, Ind., to Indiana, Illinois, Wisconsin, and Missouri, 439.

IRON, PIG. North Birmingham, Ala., to New Orleans, La., for export, 311.

IRON, SCRAP:

Burmah, Idaho, to Seattle, Wash., 313.

•Reduced rates, 676 (720).

Seattle, Wash., from Bellingham and Sedro Woolley, Wash., 615.

Silvis, Ill., to Moline, Ill., 317.

JUICE, GRAPE. Highland, N. Y., to Little Rock, Ark., and Houston, Tex., 485.

JUNK. Reduced rates, 676 (720).

KEGS, EMPTY SLACK OR TIGHT WOODEN. St. Louis, Mo., to Evansville, Ind., Louisville, Ky., and Cincinnati, Ohio, 645.

KEROSENE. Reduced rates, 676 (720).

LARD SUBSTITUTES. Reduced rates, 676 (725).

LEAD, RED, SUBLIMED, AND WHITE. Chicago, Ill., and other points in central territory to New York, N. Y., and other points east of Pittsburgh, Pa., and Buffalo, N. Y., 343.

LIME. Reduced rates, 676 (712).

LIMESTONE. Flux, Utah, to Burley, Paul, and McMillan, Idaho, 328.

LIMESTONE. Thomasville, Pa., to Tyrone, Pa., 534.

LINTERS, COTTON. Reduced rates, 676 (717).

LITHARGE. Chicago, Ill., and other points in central territory to New York, N. Y., and other points east of Pittsburgh, Pa., and Buffalo, N. Y., 343.

LIVE STOCK:

Montana, Utah, Idaho, California, Oregon, and Washington to Spokane and Tacoma, Wash., 125.

Reduced rates, 676 (716).

LOGS:

Divisions, 375 (383).

Nashville, Tenn., from points on the Nashville, Chattanooga & St. Louis and Tennessee Central railways, 181.

LOGS, HARDWOOD:

Bondurant, Ky., from Menglewood, Proctor City, Wynnburg, Miston, and Lenox, Tenn., 427.

Miston, Tenn., to Trimble, Tenn., to be manufactured and reshipped, 427.

LUMBER:

Boston, Ind. Reconsignment, 161.

Divisions, 375 (383).

Jackson and Brookhaven, Miss. Dressing in transit, 505.

Montana, Idaho, Utah, and other points from Spokane, Portland & Seattle Ry. points, 71.

Oregon, Washington, Idaho, and Montana to eastern destinations. Minima, 98.

Reduced rates, 676 (715).

Washington to Idaho, Utah, and Colorado, 659.

LUMBER ARTICLES. Montana, Idaho, Utah, and other points from Spokane, Portland & Seattle Ry. points, 71.

LUMBER, FIR. Oregon, Washington, Idaho, and Montana to eastern destinations. Minima, 98.

LUMBER, GUM. Chicago, Ill. Demurrage, 127.

LUMBER, HEMLOCK, LARCH, PINE, AND SPRUCE. Oregon, Washington, Idaho, and Montana to eastern destinations. Minima, 98.

MACHINERY, ELECTRICAL, PAPER MAKING, PULP MAKING, AND SCREENING. Camas, Wash., and West Linn, Oreg., from points east of the Missouri River, 631.

MARBLE. Reduced rates, 676 (726).

MATTING. Minnesota Transfer, Minn. Storage-in-transit, 572.

MATTING, RUBBER, SCRAP. Official territory. Rating, 748.

MATS, RUBBER, SCRAP. Official territory. Rating, 748.

MEAL, COTTONSEED. Reduced rates, 676 (717).

MEAL, PALM-KERNEL. New Orleans, La., to Cedar Rapids, Iowa, and Peoria and other Illinois points, 352.

MEAL, PEANUT. Reduced rates, 676 (717).

MEAT, FRESH:

Chicago, Ill., to Gary, Ind., 43.

East St. Louis, Ill., to Kentucky, Tennessee, Mississippi, Virginia, Alabama, North Carolina, South Carolina, Georgia, and Florida, 287.

Kansas City, Kans., South Joseph, Mo., and Omaha, Nebr., to Ohio River crossing, destined to southeastern territory, 157.

Mason City, Iowa, to Minneapolis, Minn., 34.

Moultrie, Ga., to Georgia and Florida, 287.

MEDICINE. Perth Amboy, N. J., to Jersey City, N. J., 555.

MERCHANDISE. Divisions, 375 (383).

METAL, SCRAP. Texas, Oklahoma, and Arkansas to Chicago, Ill., and St. Louis, Mo., 115.

MILK. Reduced rates, 676 (724).

MILK, CONDENSED. Glendale, Ariz., to Texas, 340.

MOHAIR. Reduced rates, 676 (717).

MOLASSES. Reduced rates, 676 (726).

MOLASSES, BLACKSTRAP. Birmingham, Ala., from New Orleans, La., and Mobile, Ala., 335.

MOTORS. Camas, Wash., and West Linn, Oreg., from points east of the Missouri River, 631.

MULES. Texas to Natchez, Miss., 130.

NAVAL STORES. Reduced rates, 676 (726).

NITROCELLULOSE, WET. Wilmington, Del. Delivery and demurrage charges, 419.

NURSERY STOCK. Reduced rates, 676 (718).

OILCLOTH, TABLE AND SHELF. Portland, Oreg., from Peekskill, N. Y., and Rock Island, Ill., 589.

OIL, COCONUT:

Ivorydale, Ohio, to and from Macon, Ga., 373.

New Orleans and Baton Rouge, La., to St. Louis and Kansas City, Mo., Chicago, Ill., Buffalo and Brooklyn, N. Y., Jersey City and Babbitt, N. J., and other eastern points, 352.

OIL, COPRA:

Ivorydale, Ohio, to and from Macon, Ga., 373.

New Orleans and Baton Rouge, La., to St. Louis and Kansas City, Mo., Chicago, Ill., Buffalo and Brooklyn, N. Y., Jersey City and Babbitt, N. J., and other eastern points, 352.

OIL, COTTONSEED. Reduced rates, 676 (725).

OIL, CREOSOTE. Reduced rates, 676 (726).

OIL, CRUDE:

Iowa Park, Tex., to New Orleans, La., 629.

Kansas, Oklahoma, and Texas to Franklin and Lacy Station, Pa. (By pipe line), 458.

Reduced rates, 676 (720).

OIL, FISH. Port St. Joe, Fla., to Ivorydale, Ohio, 121.

OIL, FUEL:

Arkansas City, Kans., to Hutchinson, Kans., originating at Ponca City, Okla., 192.

Crete and Grand Island, Nebr., from Kansas, Oklahoma, and Omaha and South Omaha, Nebr., 507.

Divisions, 375 (383).

Hutchinson, Kans., to Ponca City, Okla., 192.

Kansas City and Joplin, Mo., to Crete and Grand Island, Nebr., 507.

OIL, FUEL.—Continued.

Reduced rates, 676 (720).

Sioux City, Iowa, from Kansas, Oklahoma, and Omaha, Nebr., 507.

OIL, GAS:

Kansas City, Mo., to Grand Island, Nebr., 507.

Keokuk, Iowa, from Kansas, Oklahoma, and Missouri, 517.

Missouri, Kansas, and Oklahoma to Hastings and Grand Island, Nebr., 507.

Reduced rates, 676 (720).

OIL, LINSEED. Edgewater (Undercliff), N. J., to official territory, 522.

OIL, LUBRICATING. Reduced rates, 676 (720).

OIL, PALM-KERNEL. New Orleans and Baton Rouge, La., to St. Louis and Kansas City, Mo., Chicago, Ill., Buffalo and Brooklyn, N. Y., Jersey City and Babbitt, N. J., and other eastern points, 352.

OIL, PETROLEUM LUBRICATING. Newark, N. J., to Charlotte, N. C., and Atlanta, Ga., 477.

OIL, PETROLEUM ROAD. Missouri, Kansas, Oklahoma, and Arkansas to Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Canada, 471.

OIL, REFINED PETROLEUM. Little Rock, Ark., from Cushing, Pemeta, Oilton, and Blackwell, Okla., 77.

OIL, VEGETABLE. Reduced rates, 676 (725).

OILS. Reduced rates, 676 (726).

OIL-WELL SUPPLIES. St. Louis, Mo., and Fort Worth and Dublin, Tex., from eastern points, diverted or reconsigned to Texas oil fields, 151.

OLEOMARGARINE. Reduced rates, 676 (718).

ORE:

Clarkdale, Ariz. Switching, 271.

Reduced rates, 676 (711).

ORE, BAUXITE. Reduced rates, 676 (726).

OUTFITS, CHAUTAUQUA. Chicago, Ill., to Pacific coast, and return, 492.

OUTFITS, CONTRACTOR'S. Alice, Minn., to New Duluth, Minn., via Duluth, Minn., 201.

OXIDE, ZINC. Chicago, Ill., and other points in central territory to New York, N. Y., and other points east of Pittsburgh, Pa., and Buffalo, N. Y., 343.

PACKING-HOUSE PRODUCTS:

East St. Louis, Ill., to Kentucky, Tennessee, Mississippi, Virginia, Alabama, North Carolina, South Carolina, Georgia, and Florida, 287.

Kansas City, Kans., and South St. Joseph, Mo., to Ohio River crossings, destined to southeastern territory, 157.

Mason City, Iowa, to Minneapolis and Duluth, Minn., 34.

Moultrie, Ga., to Georgia and Florida, 287.

Reduced rates, 676 (718).

PACKING, RUBBER, SCRAP. Official territory. Rating, 748.

PAPER. Reduced rates, 676 (725).

PAPER, BOOK. Reduced rates, 676 (725).

PAPER, NEWSPRINT:

Reduced rates, 676 (725).

Scranton, Pa., from Corinth, Delano Junction, and Fort Edwards, N. Y., 203.

PAPER PRODUCTS. Reduced rates, 676 (725).

PAPER, PRINTING. Reduced rates, 676 (725).

PAPER, WASTE:

Bogota, N. J., from New York, Brooklyn, and Long Island City, N. Y., 162.

Reduced rates, 676 (720).

PAPER, WRAPPING. Reduced rates, 676 (725).

PEANUTS. Reduced rates, 676 (717).

PEANUTS, SALTED. Southern Classification territory. Rating, 623.

PEBBLES, FLINT. Boston, Mass., New York, N. Y., and Baltimore, Md., to Silica, East Liverpool, and Laughlin, Ohio, 146.

PETROLATUM. Perth Amboy, N. J., to Jersey City, N. J., 555.

PETROLEUM:

Reduced rates, 676 (720).

Shreveport, La., group to Baton Rouge, La., and Natchez and Vicksburg, Miss., destined to southeastern territory, 564.

PETROLEUM, CRUDE:

Mile Post 343, Ranger, Tex., to Fort Smith, Ark., 138.

Texas and Louisiana to Okmulgee, Okla., and Independence, Kans., 648.

Wichita Falls, Tex., to Oklahoma City and Cushing, Okla., 496.

PETROLEUM PRODUCTS:

Missouri, Kansas, Oklahoma, and Arkansas to Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Canada, 471.

Reduced rates, 676 (720).

Shreveport, La., group to Baton Rouge, La., and Natchez and Vicksburg, Miss., destined to southeastern territory, 564.

PHOSPHATE, ACID. Reduced rates, 676 (719).

PICKLES. Reduced rates, 676 (718).

PIGMENTS. Chicago, Ill., and other points in central territory to New York, N. Y., and other points east of Pittsburgh, Pa., and Buffalo, N. Y., 343.

PIPE, IRON. Woodlawn, Pa., and Wheeling, W. Va., to St. Louis, Mo., diverted or reconsigned to Texas oil fields, 151.

PIPE, WROUGHT IRON:

Pittsburgh, Pa., to Hillendahl, Bellaire, and Fairbanks, Tex., 651.

Woodlawn, Pa., to Taft, Calif., diverted in transit to Des Moines, Calif., and then to Seguro, Calif., 143.

PLASTER. Reduced rates, 676 (712).

PLATES, STEEL. Galveston, Tex., to New Orleans, La., 424.

POLES, TENT. Kansas City, Mo., from Army camps, 40.

POTASH. Reduced rates, 676 (719).

POTATOES:

Aroostook County, Me., to Boston, Mass., New York, N. Y., Philadelphia, Pa., and other points. Heater car service, 446.

Reduced rates, 676 (717).

POTTERY. Reduced rates, 676 (726).

POULTRY, DRESSED. Kansas City, Kans., South St. Joseph, Mo., and Omaha, Nebr., to Ohio River crossings, destined to southeastern territory, 157.

POULTRY, LIVE. Reduced rates, 676 (717).

POWDER, SMOKELESS. Wilmington, Del. Delivery and demurrage charges, 419.

PRESERVES. Reduced rates, 676 (718).

PULP, WOOD. Reduced rates, 676 (726).

PUMPS. Camas, Wash., and West Linn, Oreg., from points east of the Missouri River, 681.

RAILS, OLD. LaFayette, Ind, to Mobile, Ala., 9.

RAILS, STEEL. Galveston, Tex., to New Orleans, La., 424.

RESIN. Reduced rates, 676 (725).

RICE. Reduced rates, 676, (717).

RICE PRODUCTS. Reduced rates, 676 (717).

RIPRAP:

Bedford district, Ind., to Chicago, Ill., 274.

Texas to and from Texas, Louisiana, and Arkansas, 475.

ROAD MATERIALS. Reduced rates, 676 (712).

ROCK, GROUND. West Frankfort, Ill., to Christopher and Sesser, Ill., 584.

ROCK, LIME. Flux, Utah, to Burley, Paul, and McMillan, Idaho, 328.

ROCK, PHOSPHATE, CRUDE, DRY, LAND PEBBLE, AND UNGROUND. Brewster, Fla., to Royster, Fla., 552.

RODS, SUCKER, IRON. Toledo, Ohio, to St. Louis, Mo., diverted or reconsigned to Ranger, Tex., 151.

ROLLERS, CLOTHES WRINGER, RUBBER, SCRAP. Official territory. Rating, 748.

ROLLS, PAPER-MILL. Camas, Wash., and West Linn, Oreg., from points east of the Missouri River, 631.

ROPE, WIRE. Trenton, N. J., to Dublin, Tex., diverted or reconsigned to Gorman, Tex., 151.

ROPES, GUY, TENT. Kansas City, Mo., from Army camps, 40.

RUBBER ARTICLES, SCRAP. Official territory. Rating, 748.

RUBBER, SCRAP. Official territory. Rating, 748.

RUGS, RICE-STRAW. Minnesota Transfer, Minn. Storage-in-transit, 572.

SAND:

Grinter, Kans., to Kansas City, Mo., switching district, 111.

Irving, N. Y., to James City, Pa., 141.

Reduced rates, 676 (712).

Wolcottville, Ind., to Chicago switching district, 92.

SAND, GLASS. Hancock, W. Va., to Parkersburg, W. Va., 322.

SAUERKRAUT. Reduced rates, 676 (724).

SEEDS:

Reduced rates, 676 (718).

Schuyler, Nebr. Transit privileges, 550.

SHEETS, COTTON-PICKING. Southern classification territory. Rating, 623.

SHELLS, CLAM AND MUSSEL. Reduced rates, 676 (726).

SHINGLES, CEDAR. Oregon, Washington, and British Columbia to Chicago, Ill., St. Louis, Mo., and points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin, 95.

SHOES. Reduced rates, 676 (726).

SHOES, RUBBER, SCRAP. Official territory. Rating, 748.

SLABS, CLAY AND SHALE. General brick case, 213.

SLAG. Reduced rates, 676 (712).

SLATE, ROOFING. Reduced rates, 676 (723).

SOAP:

Chicago, Ill., to southern classification territory, 537.

Reduced rates, 676 (725).

SODA ASH:

Detroit and Wyandotte, Mich., to Salem and Millville, N. J., 643.

Hutchinson, Kans., to Sand Springs, Okla., 653.

Reduced rates, 676 (726).

SODA, CAUSTIC. Reduced rates, 676 (726).

SODA, NITRATE OF:

Baltimore, Md., to Barksdale, Wis., 579.

Reduced rates, 676 (719).

SOIL CONDITIONERS. Reduced rates, 676 (726).

STAKES, TENT. Kansas City, Mo., from Army camps, 40.

STAVES. New Orleans, La., to and from Frellsen, La., 395.

STEEL. Reduced rates, 676 (711).

STONE. Divisions, 375 (383).

STONE, CRUSHED. Reduced rates, 676 (712).

STONE, RIPRAP:

Redford district, Ind., to Chicago, Ill., 274.

Texas to and from Texas, Louisiana, and Arkansas, 475.

STRAW. Reduced rates, 676 (717).

SUGAR, REFINED. Sugarland, Tex., to Texas common points, 25.

SULPHUR:

Divisions, 375 (383).

Reduced rates, 676 (725).

SWEEPINGS, COTTON FACTORY. Uniontown, Ala., to Pacsteel, Calif., 403.

SYRUP. Reduced rates, 676 (726).

SYRUP, CANE. Montgomery, Ala., from Live Oak, Madison, and Monticello, Fla., 618.

TAILINGS, PETROLEUM WAX. Missouri, Kansas, Oklahoma, and Arkansas to Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Canada, 471.

TALC. Lucaston, N. J., from Hailesboro, Emeryville, and Talcville, N. Y., 581.

TALLOW. Reduced rates, 676 (725).

TANKAGE. Reduced rates, 676 (719).

TANKS. Reduced rates, 676 (726).

TENTS. Kansas City, Mo., from Army camps, 40.

TERRA COTTA. Reduced rates, 676 (726).

TILE. Reduced rates, 676 (712).

TILE, HOLLOW BUILDING. General brick case, 213.

TIRES, RUBBER, SCRAP. Official territory. Rating, 748.

TOBACCO, UNMANUFACTURED. Reduced rates, 676 (717).

TRANSFORMERS. Camas, Wash., and West Linn, Oreg., from points east of the Missouri River, 631.

TRINITROTOLUOL. Wilmington, Del. Delivery and demurrage charges, 419.

TUBES, BOILER. Camas, Wash., and West Linn, Oreg., from points east of the Missouri River, 631.

TURBINES, STEAM. Schenectady, N. Y., to Seattle, Wash., 195.

TWINE, COTTON. Uniontown, Ala., to Pacsteel, Calif., 403.

VASELINE. Perth Amboy, N. J., to Jersey City, N. J., 555.

VEGETABLES:

Minnesota, North Dakota, South Dakota, Iowa, and Nebraska. Rating, 401.

Reduced rates, 676 (717).

WASTE MATERIALS. Reduced rates, 676 (720).

WATERMELONS. Reduced rates, 676 (717).

WATER-WHEEL PARTS. Camas, Wash., and West Linn, Oreg., from points east of the Missouri River, 631.

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WHEAT:

Atlanta, Ga., from Sikeston and Benton, Mo., 525.

Lucas, Kans., to Salina, Kans., inspected and diverted to South Vallejo and Stockton, Calif., 559.

Minneapolis, St. Paul, Minnesota Transfer, and Duluth, Minn., and Itasca and Superior, Wis., to trunk line territory and New England. Proportional rates, 665.

WIRE, GALVANIZED. Grand Crossing, Ill., to Seattle, Wash., for export, 539.

WOOD, FUEL. Wisconsin to Camp Grant, Ill., 409.

WOOD, PULP. Reduced rates, 676 (725).

WOODWORK, AUTOBODY. St. Louis, Mo., to Tarrytown, N. Y., 279.

WOOL. Reduced rates, 676 (717).

WORMSEED, GROUND. Omaha, Nebr., from Chicago and South Elgin, Ill., 467.

WRAPPERS, PAPER BOTTLE-NECK. Vineland, N. J., to Los Angeles, Calif., 155.

YARNS, COTTON. New Bedford Wharf, Mass., to Pier 40, North River, New York, N. Y., by water, 85.

ZINC LEAD WHITE. Chicago, Ill., and other points in central territory to New York, N. Y., and other points east of Pittsburgh, Pa., and Buffalo, N. Y., 343.

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TABLE OF LOCALITIES.

[Numbers in parentheses following citations indicate where locality is considered.]

- Abbeville, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Abilene, Tex., from Glendale, Ariz. Condensed milk, 340.
- Abingdon, Ill., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Aetna, Ind., to Wilmington, Del. Explosives, 419.
- Alabama from East St. Louis, Ill. Fresh meat and packing-house products, 287.
- Alabama from Shreveport, La., group, via Baton Rouge, La., and Natchez and Vicksburg, Miss. Petroleum and products, 564.
- Albany, Ga. Switching charges, 331.
- Albany, N. Y., from Aroostook County, Me. Potatoes; heater car service, 446.
- Albion, Ill., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Alexandria, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Alexandria, La., from Illinois mines. Bituminous coal, 1.
- Alice, Minn., to New Duluth, Minn., via Duluth, Minn. Contractor's outfit, 201.
- Alton, Ill., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Amarillo, Tex., from Glendale, Ariz. Condensed milk, 340.
- Anderson, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Antioch, Ill., to Chicago, Ill. Ice, 309.
- Ardmore, S. Dak., to Omaha, Nebr., and Kansas City, Mo. Filtering clay, 545.
- Argo, Kans., to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Arizona. Cereals, cereal products, and hay, 118.
- Arkansas to Chicago, Ill., and St. Louis, Mo. Scrap aluminum and metals, 115.
- Arkansas to Helena, Ark., concentrated, compressed, and reshipped to eastern mill points and Gulf ports. Cotton, 637.
- Arkansas to Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Canada. Asphalt, road oil, and wax tailings, 471.
- Arkansas from Illinois mines. Bituminous coal, 1.
- Arkansas to and from Texas Riprap, 475.
- Arkansas City, Kans. Switching, 548.
- Arkansas City, Kans., to Hutchinson, Kans., originating at Ponca City, Okla. Fuel oil, 192.
- Arnaudville, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Aroostook County, Me., to Boston, Mass., New York, N. Y., Philadelphia, Pa., and other points. Potatoes; heater car service, 446.
- Atlanta, Ga., from Newark, N. J. Petroleum lubricating oil and grease, 477.

- Atlanta, Ga., from Sikeston and Benton, Mo. Wheat, 525.
- Augusta, Kans., to Crete, Grand Island, and Hastings, Nebr., and Sioux City, Iowa. Fuel and gas oils, 507.
- Aurora, Ind., from Linton and Princeton districts, Ind. Bituminous coal, 349.
- Babbitt, N. J., from New Orleans, La. Palm-kernel oil or copra oil, 352.
- Baltimore, Md., to Barksdale, Wis. Nitrate of soda, 579.
- Baltimore, Md., from Seattle and Tacoma, Wash. Pyrethrum flowers, 292.
- Baltimore, Md., to Silica, East Liverpool, and Laughlin, Ohio. Flint pebbles and brick, 146.
- Barberton, Ohio, to Camas, Wash., and West Linn, Oreg. Pulp and paper-making machinery, 631.
- Barbreck, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf coast ports. Cotton, 611.
- Barksdale, Wis., from Baltimore, Md. Nitrate of soda, 579.
- Bartlesville, Okla., to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Bassett, Va., to Burlington, Iowa. Furniture, 267 (268).
- Baton Rouge, La., to Kansas City and St. Louis, Mo., Chicago, Ill., Buffalo, N. Y., and other eastern points. Palm-kernel oil or copra oil, 352.
- Baton Rouge, La., from Shreveport, La., group, destined to southeastern territory. Petroleum and products, 564.
- Beaumont, Tex., from Hattiesburg, Miss. Gravel, 321.
- Bedford district, Ind., to Chicago, Ill. Riprap stone, 274.
- Bellaire, Tex., from Pittsburgh, Pa. Wrought iron pipe, 651.
- Bellingham, Wash., to Seattle, Wash. Scrap iron, 615.
- Benton, Mo., to Atlanta, Ga. Wheat, 525.
- Big Sandy district, Ky., to Indiana and Illinois, and St. Louis, Mo. Bituminous coal, 29.
- Big Stone Gap district, Va., to Indiana and Illinois, and St. Louis, Mo. Bituminous coal, 29.
- Big Vein, Ind., to Rialto and Crescentville, Ohio. Coal, 479.
- Birmingham, Ala., from Memphis, Tenn. Class and commodity rates, 108.
- Birmingham, Ala., from New Orleans, La., and Mobile, Ala. Blackstrap molasses, 335.
- Blackwell, Okla., to Little Rock, Ark. Refined petroleum oils, 77.
- Bloomfield, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Bogota, N. J., from New York, Brooklyn, and Long Island City, N. Y. Waste paper, 162.
- Boise, Idaho, from Washington. Lumber and forest products, 659.
- Bondurant, Ky., from Menglewood, Procter City, Wynnburg, Miston, and Lenox, Tenn. Hardwood logs, 427.
- Boston, Ind. Lumber and forest products; reconsignment, 161.
- Boston, Mass., from Arkansas, concentrated, compressed, and reshipped at Helena, Ark. Cotton, 637.
- Boston, Mass., from Aroostook County, Me. Potatoes; heater-car service, 446.
- Boston, Mass., to Silica, East Liverpool, and Laughlin, Ohio. Flint pebbles and brick, 146.
- Brazil, Ind., from Brazil district, Ind. Bituminous coal, 295.
- Brazil, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile and other clay products, 213 (239).
- Brazil, Ind., from Clinton and Brazil districts, Ind. Bituminous coal, 435.
- Brazil district, Ind., to Brazil, Ind. Bituminous coal, 295.

- Brazil district, Ind., to West Montezuma, Brazil, and Terre Haute, Ind. Bituminous coal, 435.
- Breaux Bridge, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Brewster, Fla., to Royster, Fla. Dry phosphate rock, 552.
- Bridgeport, Wis., to Camp Grant, Ill. Fuel wood, 409.
- British Columbia to Chicago, Ill., St. Louis, Mo., and points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin. Cedar shingles 95.
- Brookhaven, Miss. Lumber; dressing in transit, 505.
- Brooklyn, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Brooklyn, N. Y., to Bogoto, N. J. Waste paper, 162.
- Brooklyn, N. Y., from New Orleans, La. Palm-kernel oil or copra oil, 352.
- Brownstown, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Brownwood, Tex., from Glendale, Tex. Condensed milk, 340.
- Brownwood, Tex., to Okmulgee, Okla. Crude petroleum, 648.
- Buffalo, N. Y., from New Orleans and Baton Rouge, La. Palm-kernel oil or copra oil, 352.
- Bunker, Wash., to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- Burley, Idaho, from Flux, Utah. Limerock, 328.
- Burlington, Iowa, from North Carolina and Virginia. Furniture, 267.
- Burmah, Idaho, to Seattle, Wash. Scrap iron, 313.
- Burnham, Ill., from Fort Wayne, Ind. Bar iron, 439.
- Caesar, Tex., to Natchez, Miss. Horses and mules, 130.
- California to Spokane and Tacoma, Wash. Livestock, 125.
- Camas, Wash., from points east of the Missouri River. Pulp and paper making machinery, 631.
- Cameron, Utah, to Salt Lake City, Utah. Bituminous coal, 118.
- Camp Grant, Ill., from Wisconsin. Fuel wood, 409.
- Canada from Missouri, Kansas, Oklahoma, and Arkansas. Asphalt, road oil, and wax tailings, 471.
- Canada to and from United States. Class rates, 20.
- Cannelburg, Ind., to Loogootee, Ind. Bituminous coal, 443.
- Canton, Ill., to Chicago, Ill., and Milwaukee Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Cape Girardeau, Mo., to Fisher, Ark., reconsigned to Little Rock, Ark. Cement, 635.
- Captain Creek, Okla., to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Carbon, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Carencro, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Carney's Point, N. J. Explosives; delivery and demurrage charges, 419.
- Cayuga, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Cedar Rapids, Iowa, from New Orleans, La. Palm-kernel meal, 352.
- Central territory to New York, N. Y., and other points east of Pittsburgh, Pa., and Buffalo, N. Y. Sublimed lead and pigments, 343.
- Central territory from O. & K. Junction, Ky. Bituminous coal, 205.
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- Central territory from St. Louis, Mo., East St. Louis, Ill., and upper Mississippi River crossings. Burlap and gunny bags, 587.
- Charlotte, N. C., from Newark, N. J. Petroleum lubricating oil and grease, 477.
- Chatham, N. Y., from Aroostook County, Me. Potatoes; heater car service, 446.
- Chattanooga, Tenn., from Cohutta, Ga., and McDonald, Summit, and Tyner, Tenn. Excelsior bolts, 165.
- Chattanooga, Tenn., to Lodi, N. J. Alum, 333.
- Chelan, Wash., to Dallas, Tex., stored and forwarded to El Paso, Tex. Apples, 135.
- Cheneyville, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Cherokee, Okla., to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Chicago, Burlington & Quincy R. R. points to Missouri River points, Chicago, Ill., St. Paul and Duluth, Minn., and other points, transited at Schuyler, Nebr. Grain and seeds, 550.
- Chicago, Ill. Fruit; switching, 89.
- Chicago, Ill. Gum lumber; demurrage, 127.
- Chicago, Ill. Riprap stone; switching, 274.
- Chicago, Ill., from Bedford district, Ind. Riprap stone, 274.
- Chicago, Ill., from Chicago, Burlington & Quincy R. R. points, transited at Schuyler, Nebr. Grain and seeds, 550.
- Chicago, Ill., from Dunmore, Pa. Anthracite coal, 199.
- Chicago, Ill., from Fort Wayne, Ind. Bar iron, 439.
- Chicago, Ill., to Gary, Ind. Fresh meats, 43.
- Chicago, Ill., to Iowa and Nebraska, originating at West Clinton, Ind. Bituminous coal, 285.
- Chicago, Ill., from New Orleans and Baton Rouge, La. Palm-kernel oil or copra oil, 352.
- Chicago, Ill., from New Orleans and Harvey, La. Alcohol, 389.
- Chicago, Ill., to New York, N. Y., and other points east of Pittsburgh, Pa., and Buffalo, N. Y. Sublimed lead and pigments, 343.
- Chicago, Ill., to Omaha, Nebr. Ground wormseed, 467.
- Chicago, Ill., from Oregon, Washington, and British Columbia. Cedar shingles, 95.
- Chicago, Ill., to and from Pacific coast. Chautauqua outfits, 492.
- Chicago, Ill., to South Atlantic and Gulf ports, destined to Pacific coast, via Panama Canal. Class and commodity rates, 74.
- Chicago, Ill., to southern classification territory. Soap, 587.
- Chicago, Ill., to Tacoma, Wash. Steel bed parts, 211.
- Chicago, Ill., from Texas, Oklahoma, and Arkansas. Scrap aluminum and metals, 115.
- Chicago, Ill., from Trevor, Wis., and Lake Marie (Antioch), Ill. Ice, 309.
- Chicago, Ill., from various points. Brick, hollow building tile, and other clay products, 213 (239).
- Chicago, Ill., from Wolcottville, Ind. Sand and gravel, 92.
- Chicago Heights, Ill., to Oakland, Calif. Iron foundry flasks, 149.
- Chicago switching district from Wolcottville, Ind. Sand and gravel, 92.
- Christopher, Ill., from West Frankfort, Ill. Ground rock or shale dust, 584.
- Cincinnati, Ohio, to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Cincinnati, Ohio, from Dyer, Tenn. Knocked-down poultry coops, 656.
- Cincinnati, Ohio, from New Orleans and Harvey, La. Alcohol, 389.
- Cincinnati, Ohio, from O. & K. Junction, Ky. Bituminous coal, 205.

- Cincinnati, Ohio, to Pacific coast points. Pipeless furnaces with sheet-metal casings and caps, 805.
- Cincinnati, Ohio, from St. Louis, Mo. Empty slack or tight wooden barrels and kegs, 645.
- Clarkdale, Ariz. Ore; switching, 271.
- Clearfield, Pa., group to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (240).
- Clinton, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Clinton, Iowa, to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Clinton district, Ind., to West Montezuma, Brazil, and Terre Haute, Ind. Bituminous coal, 435.
- Cobb, Kans., to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Cohutta, Ga., to Chattanooga, Tenn. Excelsior bolts, 165.
- Colorado from Washington. Lumber and forest products, 659.
- Concordia, Kans., to Crete, Nebr. Cream, 319.
- Connecticut from Aroostook County, Me. Potatoes; heater car service, 446.
- Connellsville, Pa., group to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (240).
- Corinth, N. Y., to Scranton, Pa. Newsprint paper, 203.
- Corpus Christi, Tex., from Glendale, Ariz. Condensed milk, 340.
- Cragin, Ill., to Stoughton, Wis. Tin cans, 307.
- Crawfordsville, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Creek, Okla., to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Crescentville, Ohio, from Big Vein, Ind. Coal, 479.
- Crete, Nebr., from Concordia, Kans. Cream, 319.
- Crete, Nebr., from Kansas City and Joplin, Mo., Omaha and South Omaha, Nebr., and Kansas and Oklahoma. Gas and fuel oils, 507.
- Cross Plains, Wis., to Camp Grant, Ill. Fuel wood, 409.
- Cushing, Okla., to Little Rock, Ark. Refined petroleum oils, 77.
- Cushing, Okla., from Wichita Falls, Tex. Crude petroleum, 496.
- Dallas, Tex., from Chelan, Wash., stored and forwarded to El Paso, Tex. Apples, 135.
- Dallas, Tex., to Chicago, Ill., and St. Louis, Mo. Scrap aluminum and metals, 115.
- Danville, Ill., to East St. Louis and Madison, Ill. Brick and brick articles, 455.
- Dayton, Ohio, to West Linn, Oreg. Pulp and paper-making machinery, 631.
- Decatur, Ill., from Fort Wayne, Ind. Bar iron, 439.
- Decatur, Ill., from New Orleans, La. Palm-kernel meal, 352 (365).
- Delano Junction, N. Y., to Scranton, Pa. Newsprint paper, 203.
- Del Rio, Tex., to Natchez, Miss. Horses and mules, 130.
- Deming, N. Mex., from Monitor and Wenatchee, Wash. Apples, 277.
- Des Moines, Calif., from Woodlawn, Pa., originally consigned to Taft, Calif. Wrought iron pipe, 143.
- Detroit, Mich., to Flint, Mich. Automobile-tire carriers, 281.
- Detroit, Mich., to Fort Worth, Tex. Automobile wooden floor, toe, and running boards, 325.
- Detroit, Mich., to Salem and Millville, N. J. Soda ash, 643.
- Dinwiddie, Ind., to Memphis, Tenn. Hay, 159.
- Doty, Wash., to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- Drexel, N. C., to Burlington, Iowa. Furniture, 267 (268).

- Dryard, Wash., to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- Dublin, Tex., from Trenton, N. J., diverted or reconsigned to Gorman, Tex. Oil-well supplies, 151.
- Duluth, Minn., from Chicago, Burlington & Quincy R. R. points, transited at Schuyler, Nebr. Grain and seeds, 550.
- Duluth, Minn., to East Dubuque and Fulton, Ill. Beer, 315.
- Duluth, Minn., from Mason City, Iowa. Packing house products, 34.
- Duluth, Minn., to New Duluth, Minn., originating at Alice, Minn. Contractor's outfit, 201.
- Duluth, Minn., to trunk line territory and New England. Grain and products; proportional rates, 665.
- Dunmore, Pa., to Chicago, Ill. Anthracite coal, 199.
- Duson, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Dyer, Tenn., to Cincinnati, Ohio. Knocked down poultry coops, 656.
- East Dubuque, Ill., from Duluth, Minn. Beer, 315.
- Eastern points from Arkansas, concentrated, compressed, and reshipped from Helena, Ark. Cotton, 637.
- Eastern points from Chicago, Ill., and other points in central territory. Sublimed lead and pigments, 343.
- Eastern points from New Orleans and Baton Rouge, La. Palm-kernel oil or copra oil, 352.
- Eastern points from north Pacific coast. Lumber and forest products minima, 98.
- Eastland, Tex., from Woodlawn, Pa., diverted or reconsigned at St. Louis, Mo. Oil-well supplies, 151.
- East Liverpool, Ohio, from Boston, Mass., New York, N. Y., and Baltimore, Md. Flint pebbles, and brick, 146.
- East Peoria, Ill., from Peoria, Ill. Switching, 412.
- East St. Louis, Ill., to central territory. Burlap and gunny bags, 587.
- East St. Louis, Ill., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile and other clay products, 213 (239).
- East St. Louis, Ill., from Danville, Ill. Brick and brick articles, 455.
- East St. Louis, Ill., to Kentucky, Tennessee, Mississippi, Virginia, Alabama, North Carolina, South Carolina, Georgia, and Florida. Fresh meat and packing house products, 287.
- East St. Louis, Ill., from New Orleans and Harvey, La. Alcohol, 389.
- East Springfield, Mass. Free collection and delivery of express shipments, 482.
- Edgewater, N. J., to official territory. Linseed oil, 522.
- El Paso, Tex., from Chelan, Wash., stored and forwarded at Dallas, Tex. Apples, 135.
- El Paso, Tex., to Natchez, Miss. Horses and mules, 130.
- Emeryville, N. Y., to Lucaston, N. J. Talc, 581.
- Emporium, Pa., to Wilmington, Del. Explosives, 419.
- Evansville, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Evansville, Ind., from St. Louis, Mo. Empty slack or tight wooden barrels and kegs, 645.
- Fairbanks, Tex., from Pittsburgh, Pa. Wrought-iron pipe, 651.
- Fairmont, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Fairmount, N. Y., to Wilmington, Del. Explosives, 419.
- Fisher, Ark., from Cape Girardeau, Mo., reconsigned to Little Rock, Ark. Cement, 635.

- Flint, Mich., from Detroit, Mich. Automobile-tire carriers, 281.
- Florida from Moultrie, Ga., and East St. Louis, Ill. Fresh meat and packing house products, 287.
- Florida from Shreveport, La., group, via Baton Rouge, La., and Natchez and Vicksburg, Miss. Petroleum and products, 564.
- Flux, Utah, to Burley, Paul, and McMillan, Idaho. Limerock, 328.
- Forestburg, S. Dak. Hay, car distribution, 541.
- Fort Edwards, N. Y., to Scranton, Pa. Newsprint paper, 203.
- Fort Scott, Kans. Switching, 548.
- Fort Smith, Ark., to Chicago, Ill., and St. Louis, Mo. Scrap aluminum and metals, 115.
- Fort Smith, Ark., from Mile Post 343, Ranger, Tex. Crude petroleum, 188.
- Fort Wayne, Ind., to Indiana, Illinois, Wisconsin, and Missouri. Bar iron, 439.
- Fort Worth, Tex., from Detroit, Mich. Automobile wooden floor, toe, and running boards, 325.
- Fort Worth, Tex., from Glendale, Ariz. Condensed milk, 340.
- Fort Worth, Tex., from Huff, Pa., diverted or reconsigned to Ranger, Tex. Oil-well supplies, 151.
- Fort Worth, Tex., to Natchez, Miss. Horses and mules, 130.
- Fort Worth, Tex., from Wilson, Okla. Beef cattle, 303.
- Franklin, Pa., from Kansas, Oklahoma, and Texas. Crude oil by pipe line, 458.
- Frankton, Ind., from Linton and Princeton districts, Ind. Bituminous coal, 349.
- Fredonia, Kans. Switching, 548.
- Freeport, Ill., from New Orleans and Harvey, La. Alcohol, 389.
- Frellsen, La., to and from New Orleans, La. Staves, 395.
- Fulton, Ill., from Duluth, Minn. Beer, 315.
- Galesburg, Ill., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Galveston, Tex., from Arkansas, concentrated, compressed, and reshipped at Helena, Ark. Cotton, 637.
- Galveston, Tex., from Louisiana, concentrated, compressed, and reshipped at Opelousas, La. Cotton, 611.
- Galveston, Tex., to New Orleans, La. Steel rails and plates, 424.
- Galveston, Tex., from various points, compressed and reshipped at Weleetka, Okla. Cotton, 299.
- Garfield, Utah, from Spokane, Portland & Seattle Ry. points. Lumber and articles, 71.
- Gary, Ind., from Chicago, Ill. Fresh meats, 43.
- Georgia from Moultrie, Ga., and East St. Louis, Ill. Fresh meat and packing-house products, 287.
- Georgia from Shreveport, La., group, via Baton Rouge, La., and Natchez and Vicksburg, Miss. Petroleum and products, 564.
- Glendale, Ariz., to Texas. Condensed milk, 340.
- Globe, Wash., to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- Gold Dust, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Gorman, Tex., from Trenton, N. J., diverted or reconsigned at Dublin, Tex. Oil-well supplies, 151.
- Grand Crossing, Ill., to Seattle, Wash., for export. Galvanized wire, 539.
- Grand Island, Nebr., from Kansas City and Joplin, Mo., Omaha and South Omaha, Nebr., and Kansas and Oklahoma. Gas and fuel oils, 507.
- Granger, Wyo., from Spokane, Portland & Seattle Ry. points. Lumber and articles, 71.
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- Greeley, Kans., to Franklin and Lacy Stations, Pa. Crude oil by pipe line, 458.
- Green Bay, Wis., to Camas, Wash. Pulp and paper-making machinery, 631.
- Grinter, Kans., to Kansas City, Mo., switching district. Sand, 111.
- Gulf ports from Arkansas, concentrated, compressed, and reshipped at Helena, Ark. Cotton, 637.
- Gulf ports from Chicago, Ill., destined to Pacific coast, via Panama Canal. Class and commodity rates, 74.
- Gulf ports from Louisiana, concentrated, compressed, and reshipped at Opelousas, La. Cotton, 611.
- Guthrie, Okla., from various points, compressed and reshipped to Houston, Tex. Cotton, 299.
- Hailesboro, N. Y., to Lucaston, N. J. Talc, 581.
- Hammond, Ind., to New York, N. Y., for export. Steel billets, 370.
- Hancock, W. Va., to Parkersburg, W. Va. Glass sand, 322.
- Harlem River, N. Y., from Aroostook County, Me. Potatoes; heater car service, 446.
- Harrisonville, Mo. Switching, 548.
- Hartford City, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Harvard, Ill. Absorption of switching charges, 283.
- Harvey, La., to Kansas City and St. Louis, Mo., Minneapolis, Minn., Cincinnati, Ohio, East St. Louis, Chicago, and Freeport, Ill., Indianapolis, Ind., and Milwaukee, Wis. Alcohol, 389.
- Hastings, Nebr., from Missouri, Kansas, and Oklahoma. Gas oil, 507.
- Hattiesburg, Miss., to Beaumont, Tex. Gravel, 321.
- Hazard district, Ky., to Indiana and Illinois, and St. Louis, Mo. Bituminous coal, 29.
- Hebronville, Tex., to Natchez, Miss. Horses and mules, 130.
- Helena, Ark., from Arkansas, concentrated, compressed, and reshipped to eastern mill points and Gulf ports. Cotton, 637.
- Hensley, Tex., to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Hercules, Calif., to Wilmington, Del. Explosives, 419.
- Highland, N. Y., to Little Rock, Ark., and Houston, Tex. Grape juice, 485.
- High Point, N. C., to Burlington, Iowa. Furniture, 267 (268).
- Hillendahl, Tex., from Pittsburgh, Pa. Wrought iron pipe, 651.
- Hillsdale, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Homer, La., to Independence, Kans. Crude petroleum, 648.
- Houston, Tex., from Glendale, Ariz. Condensed milk, 340.
- Houston, Tex., from Highland, N. Y. Grape juice, 485.
- Houston, Tex., from Illinois mines. Bituminous coal, 1.
- Houston, Tex., from Louisiana, concentrated, compressed, and reshipped at Opelousas, La. Cotton, 611.
- Houston, Tex., to Natchez, Miss. Horses and mules, 130.
- Houston, Tex., from various points, compressed and reshipped at Weleetka and Guthrie, Okla. Cotton, 299.
- Huff, Pa., to Fort Worth, Tex., diverted or reconsigned to Ranger, Tex. Oil-well supplies, 151.
- Hugo, Ark., to Chicago, Ill. Gum lumber, 127.
- Humboldt, Kans., to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Hutchinson, Kans., from Arkansas City, Kans., originating at Ponca City, Okla. Fuel oil, 192.
- Hutchinson, Kans., to Ponca City, Okla. Fuel oil, 192.

- Hutchinson, Kans., to Sand Springs, Okla. Soda ash, 653.
- Idaho to eastern destinations. Lumber and forest products; minima, 98.
- Idaho to Spokane and Tacoma, Wash. Livestock, 125.
- Idaho from Spokane, Portland & Seattle Ry. points. Lumber and articles, 71.
- Idaho from Washington. Lumber and forest products, 659.
- Illinois from Fort Wayne, Ind. Bar iron, 439.
- Illinois to Iowa, Wisconsin, and Nebraska. Coal, 17.
- Illinois from Kentucky, West Virginia, Virginia, and Tennessee mines. Bituminous coal, 29.
- Illinois from Missouri, Kansas, Oklahoma, and Arkansas. Asphalt, road oil, and wax tailings, 471.
- Illinois from New Orleans, La. Palm-kernel meal, 352.
- Illinois from Ohio mines. Bituminous coal; divisions, 499.
- Illinois from Oregon, Washington, and British Columbia. Cedar shingles, 95.
- Illinois mines to Arkansas, Louisiana, and Texas. Bituminous coal, 1.
- Independence, Kans., from Texas and Louisiana. Crude petroleum, 648.
- Indian, Okla., to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Indiana from Fort Wayne, Ind. Bar iron, 439.
- Indiana from Kentucky, West Virginia, Virginia, and Tennessee mines. Bituminous coal, 29.
- Indiana from Missouri, Kansas, Oklahoma, and Arkansas. Asphalt, road oil, and wax tailings, 471.
- Indiana from Ohio mines. Bituminous coal; divisions, 499.
- Indiana from Oregon, Washington, and British Columbia. Cedar shingles, 95.
- Indiana mines to Aurora and Frankton, Ind. Bituminous coal, 349.
- Indiana mines to West Montezuma, Brazil, and Terre Haute, Ind. Bituminous coal, 435.
- Indianapolis, Ind., from New Orleans and Harvey, La. Alcohol, 389.
- Inland Empire to eastern destinations. Lumber and forest products; minima, 98.
- International, Utah, from Spokane, Portland & Seattle Ry. points. Lumber and articles, 71.
- Iowa. Fresh fruits and vegetables; rating, 401.
- Iowa from Illinois. Coal, 17.
- Iowa from Missouri, Kansas, Oklahoma, and Arkansas. Asphalt, road oil, and wax tailings, 471.
- Iowa from Oregon, Washington, and British Columbia. Cedar shingles, 95.
- Iowa from West Clinton, Ind., via Chicago, Ill., and Ottumwa, Iowa. Bituminous coal, 285.
- Iowa Park, Tex., to New Orleans, La. Crude oil, 629.
- Irving, N. Y., to James City, Pa. Sand, 141.
- Itasca, Wis., to trunk line territory and New England. Grain and products; proportional rates, 665.
- Ivorydale, Ohio, to and from Macon, Ga. Coconut and copra oil, 373.
- Ivorydale, Ohio, from Port St. Joe, Fla. Fish oil, 121.
- Jackson, Miss. Lumber; dressing in transit, 505.
- James City, Pa., from Irving, N. Y. Sand, 141.
- Jeffersonville, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow-building tile, and other clay products, 213 (239).
- Jellico district, Tenn., to Indiana and Illinois, and St. Louis, Mo. Bituminous coal, 29.
- Jennings, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.

- Jersey City, N. J., from New Orleans, La. Palm-kernel oil or copra oil, 352.
- Jersey City, N. J., from Perth Amboy, N. J. Vaseline, 555.
- Johnstown, Pa., group, to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (240).
- Joliet, Ill., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow-building tile, and other clay products, 213 (239).
- Joplin, Mo., to Crete and Grand Island, Nebr. Fuel oil, 507.
- Joplin, Mo., to Keokuk, Iowa. Gas oil, 517.
- Kanawha district, W. Va., to Indiana and Illinois, and St. Louis, Mo. Bituminous coal, 29.
- Kansas to Crete, Grand Island, and Hastings, Nebr., and Sioux City, Iowa. Gas and fuel oils, 507.
- Kansas to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Kansas to Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Canada. Asphalt, road oil, and wax tailings, 471.
- Kansas to Keokuk, Iowa. Gas oil, 517.
- Kansas from Missouri, Kansas, Oklahoma, and Arkansas. Asphalt, road oil, and wax tailings, 471.
- Kansas City, Kans., to Ohio River crossings, destined to southeastern territory. Fresh meats, dressed poultry, and packing-house products, 157.
- Kansas City, Mo., from Ardmore, S. Dak. Filtering clay, 545.
- Kansas City, Mo., from Army camps. Tents, 40.
- Kansas City, Mo., to Crete and Grand Island, Nebr. Gas and fuel oils, 507.
- Kansas City, Mo., to Keokuk, Iowa. Gas oil, 517.
- Kansas City, Mo., from New Orleans and Baton Rouge, La. Palm-kernel oil or copra oil, 352.
- Kansas City, Mo., from New Orleans and Harvey, La. Alcohol, 389.
- Kansas City, Mo., to Oklahoma City, Okla. Stock cattle, 45.
- Kansas City, Mo., switching district from Grinter, Kans. Sand, 111.
- Kansas City, Mo.-Kans. Reciprocal switching, 501.
- Kaplan, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Kemmerer district, Wyo., to Utah. Coal, 254.
- Kentucky from East St. Louis, Ill. Fresh meat and packing house products, 287.
- Kentucky mines to Indiana and Illinois, and St. Louis, Mo. Bituminous coal, 29.
- Keokuk, Iowa, from Kansas, Oklahoma, and Missouri. Gas oil, 517.
- Klickitat, Wash., to Montana, Idaho, and Utah. Lumber and articles, 71.
- Kokomo, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Lacy Station, Pa., from Kansas, Oklahoma, and Texas. Crude oil by pipe line, 458.
- La Fayette, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- La Fayette, Ind., from Fort Wayne, Ind. Bar iron, 439.
- La Fayette, Ind., to Mobile, Ala. Old rails, 9.
- La Fayette, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Lake Charles, La., from Illinois mines. Bituminous coal, 1.
- Lake Charles, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.

- Lake Marie (Antioch), Ill., to Chicago, Ill. Ice, 309.
- Lamar, Mo. Switching, 548.
- La Salle, Ill., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Lathrop, Ohio, to Illinois, Indiana, Michigan, Missouri, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin. Bituminous coal; divisions, 499.
- Laughlin, Ohio, from Boston, Mass., New York, N. Y., and Baltimore, Md. Flint pebbles and brick, 146.
- Lebam, Wash., to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- Lehi, Utah, from Washington. Lumber and forest products, 659.
- Lenox, Tenn., to Bondurant, Ky. Hardwood logs, 427.
- Lewis, La., to Okmulgee, Okla., and Independence, Kans. Crude petroleum, 648.
- Liberal, Mo. Switching, 548.
- Linton district, Ind., to Aurora and Frankton, Ind. Bituminous coal, 349.
- Littell, Wash., to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- Little Rock, Ark., from Cape Girardeau, Mo., reconsigned at Fisher, Ark. Cement, 635.
- Little Rock, Ark., from Cushing, Pemeta, Oilton, and Blackwell, Okla. Refined petroleum oils, 77.
- Little Rock, Ark., from Highland, N. Y. Grape juice, 485.
- Live Oak, Fla., to Montgomery, Ala. Cane sirup, 618.
- Lodi, N. J., from Chattanooga, Tenn. Alum, 333.
- Logansport, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Long Island from Aroostook County, Me. Potatoes; heater car service, 446.
- Long Island City, N. Y., to Bogoto, N. J. Waste paper, 162.
- Loogootee, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Loogootee, Ind., from Montgomery and Cannellburg, Ind. Bituminous coal, 443.
- Los Angeles, Calif., from Vineland, N. J. Paper bottle-neck wrappers or caps, 155.
- Louisiana from Illinois mines. Bituminous coal, 1.
- Louisiana to Okmulgee, Okla., and Independence, Kans. Crude petroleum, 648.
- Louisiana to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Louisiana to and from Texas. Riprap, 475.
- Louisville, Ky., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Louisville, Ky., from St. Louis, Mo. Empty slack or tight wooden barrels and kegs, 645.
- Lucas, Kans., to Salina, Kans., inspected and diverted to South Vallejo and Stockton, Calif. Wheat, 559.
- Lucaston, N. J., from Hailesboro, Emeryville, and Talcville, N. Y. Talc, 581.
- Luling, Tex., to Natchez, Miss. Horses and mules, 130.
- Lyona, Kans. Switching, 548.
- McCormick, Wash., to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- McDonald, Tenn., to Chattanooga, Tenn. Excelsior bolts, 165.
- McMillan, Idaho, from Flux, Utah. Limerock, 328.
- McRoberts district, Ky., to Indiana and Illinois, and St. Louis, Mo. Bituminous coal, 29.
- Macon, Ga., from and to Ivorydale, Ohio. Coconut or copra oil, 373.
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- Madison, Fla., to Montgomery, Ala. Cane syrup, 618.
- Madison, Ill., from Danville, Ill. Brick and brick articles, 453.
- Maine from Aroostook County, Me. Potatoes; heater car service, 446.
- Mamou, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Manuel, Okla., to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Marfa, Tex., to Natchez, Miss. Horses and mules, 130.
- Marion, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Marseilles, Ill. Trackage charge, 260.
- Martinsville, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Mason City, Iowa, to Minneapolis and Duluth, Minn. Fresh meats and packing-house products, 34.
- Massachusetts from Aroostook County, Me. Potatoes; heater car service, 446.
- Mecca, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Melrose Junction, N. Y., from Aroostook County, Me. Potatoes; heater car service, 446.
- Memphis, Tenn., to Birmingham, Ala. Class and commodity rates, 108.
- Memphis, Tenn., from Dinwiddie, Ind. Hay, 159.
- Menglewood, Tenn., to Bondurant, Ky. Hardwood logs, 427.
- Meskill, Wash., to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- Michigan from Missouri, Kansas, Oklahoma, and Arkansas. Asphalt, road oil, and wax tailings, 471.
- Michigan from Ohio mines. Bituminous coal; divisions, 499.
- Michigan from Oregon, Washington, and British Columbia. Cedar shingles, 95.
- Midcontinent fields, Kansas-Oklahoma, to Crete, Grand Island, and Hastings, Nebr., and Sioux City, Iowa. Gas and fuel oils, 507.
- Midcontinent fields, Kansas-Oklahoma, to Keokuk, Iowa. Gas oil, 517.
- Midvale, Utah, from Utah. Coal, 118.
- Mile Post 343, Ranger, Tex., to Fort Smith, Ark. Crude petroleum, 138.
- Millville, N. J., from Detroit and Wyandotte, Mich. Soda ash, 643.
- Milwaukee, Wis., from Fort Wayne, Ind. Bar iron, 439.
- Milwaukee, Wis., from New Orleans and Harvey, La. Alcohol, 389.
- Milwaukee, Wis., from various points. Brick, hollow building tile, and other clay products, 213 (239).
- Minneapolis, Minn., from Mason City, Iowa. Fresh meats and packing-house products, 34.
- Minneapolis, Minn., from New Orleans and Harvey, La. Alcohol, 389.
- Minneapolis, Minn., to trunk-line territory and New England. Grain and products; proportional rates, 665.
- Minnesota. Fresh fruits and vegetables; rating, 401.
- Minnesota from Missouri, Kansas, Oklahoma, and Arkansas. Asphalt, road oil, and wax tailings, 471.
- Minnesota Transfer, Minn. Storage-in-transit arrangements; import traffic, 572.
- Minnesota Transfer, Minn., to trunk-line territory and New England. Grain and products; proportional rates, 665.
- Mississippi from East St. Louis, Ill. Fresh meat and packing-house products, 287.

- Mississippi from Shreveport, La., group, via Baton Rouge, La., and Natchez and Vicksburg, Miss. Petroleum and products, 564.
- Mississippi River crossings to central territory. Burlap and gunny bags, 587.
- Mississippi River, points east of, from Pacific coast ports, stored in transit at Minnesota Transfer, Minn. Import traffic, 572.
- Missouri from Fort Wayne, Ind. Bar iron, 439.
- Missouri to Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Canada. Asphalt, road oil, and wax tailings, 471.
- Missouri to Keokuk, Iowa. Gas oil, 517.
- Missouri from Missouri, Kansas, Oklahoma, and Arkansas. Asphalt, road oil, and wax tailings, 471.
- Missouri from Ohio mines. Bituminous coal; divisions, 499.
- Missouri from Oregon, Washington, and British Columbia. Cedar shingles, 95.
- Missouri Pacific R. R. stations in Kansas and Missouri. Switching, 548.
- Missouri River points from Chicago, Burlington & Quincy R. R. points, transited at Schuyler, Nebr. Grain and seeds, 550.
- Miston, Tenn., to Boudurant, Ky. Hardwood logs, 427.
- Miston, Tenn., to Trimble, Tenn., to be manufactured and reshipped. Hardwood logs, 427.
- Mobile, Ala., to Birmingham, Ala. Blackstrap molasses, 335.
- Mobile, Ala., from La Fayette, Ind. Old rails, 9.
- Moline, Ill., from Silvis, Ill. Scrap iron, 317.
- Monitor, Wash., to Deming, N. Mex. Apples, 277.
- Monmouth, Ill., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Monroe, La., from Illinois mines. Bituminous coal, 1.
- Montana to eastern destinations. Lumber and forest products; minima, 98.
- Montana to Spokane and Tacoma, Wash. Live stock, 125.
- Montana from Spokane, Portland & Seattle Ry. points. Lumber and articles, 71.
- Montgomery, Ala., from Live Oak, Madison, and Monticello, Fla. Cane syrup, 618.
- Montgomery, Ind., to Loogootee, Ind. Bituminous coal, 443.
- Monticello, Fla., to Montgomery, Ala. Cane syrup, 618.
- Morris, Ill., from New Orleans, La. Palm-kernel meal, 352 (365).
- Moultrie, Ga., to Georgia and Florida. Fresh meat and packing-house products, 287.
- Mount Airy, N. C., to Burlington, Iowa. Furniture, 267 (268).
- Mount Union, Pa., to Wilmington, Del. Explosives, 419.
- Mount Vernon, Ill., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Mouton Switch, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Muncie, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Murphysboro, Ill., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Nallpee, Wash., to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- Nashua, N. H., to West Linn, Oreg. Pulp and paper making machinery, 631.
- Nashville, Chattanooga & St. Louis Ry. points to Nashville, Tenn. Logs, 181.
- Nashville, Tenn., from points on the Nashville, Chattanooga & St. Louis and Tennessee Central railways. Logs, 181.

- Natchez, Miss., from Shreveport, La., group, destined to southeastern territory. Petroleum and products, 564.
- Natchez, Miss., from Texas. Horses and mules, 130.
- Nebraska. Fresh fruits and vegetables; rating, 401.
- Nebraska from Illinois. Coal, 17.
- Nebraska from Missouri, Kansas, Oklahoma, and Arkansas. Asphalt, road oil, and wax tailings, 471.
- Nebraska from West Clinton, Ind., via Chicago, Ill., and Ottumwa, Iowa. Bituminous coal, 285.
- New Albany, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Newark, N. J., to Charlotte, N. C., and Atlanta, Ga. Petroleum lubricating oil and grease, 477.
- New Bedford Wharf, Mass., to Pier 40, North River, New York, N. Y., by water. Cotton yarns, 85.
- Newcastle, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- New Castle, Pa., to Wilmington, Del. Explosives, 419.
- New Duluth, Minn., from Alice, Minn., via Duluth, Minn. Contractor's outfit, 201.
- New England from Minneapolis, St. Paul, Minnesota Transfer, and Duluth, Minn., and Itasca and Superior, Wis. Grain and products; proportional rates, 665.
- New Hampshire from Aroostook County, Me. Potatoes; heater car service, 446.
- New Iberia, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- New Jersey from Aroostook County, Me. Potatoes; heater car service, 446.
- New Orleans, La., from Arkansas, concentrated, compressed, and reshipped at Helena, Ark. Cotton, 637.
- New Orleans, La., to Birmingham, Ala. Blackstrap molasses, 335.
- New Orleans, La., to Cedar Rapids, Iowa, and Peoria and other Illinois points. Palm-kernel meal, 352.
- New Orleans, La., to and from Frelsen, La. Staves, 395.
- New Orleans, La., from Galveston, Tex. Steel rails and plates, 424.
- New Orleans, La., from Iowa Park, Tex. Crude oil, 629.
- New Orleans, La., to Kansas City and St. Louis, Mo., Chicago, Ill., Buffalo and Brooklyn, N. Y., Jersey City and Babbitt, N. J., and other eastern points. Palm-kernel oil or copra oil, 352.
- New Orleans, La., to Kansas City and St. Louis, Mo., Minneapolis, Minn., Cincinnati, Ohio, East St. Louis, Chicago, and Freeport, Ill., Indianapolis, Ind., and Milwaukee, Wis. Alcohol, 389.
- New Orleans, La., from North Birmingham, Ala., for export. Pig iron, 311.
- New Orleans, La., from Rolling Fork, Miss. Copra cake, 352.
- New Orleans, La., from various points, compressed and reshipped at Oklahoma City or Weleetka, Okla. Cotton, 299.
- New River district, W. Va., to Indiana and Illinois, and St. Louis, Mo. Bituminous coal, 29.
- New York from Aroostook County, Me. Potatoes; heater car service, 446.
- New York from Ohio mines. Bituminous coal; divisions, 499.
- New York, N. Y., from Aroostook County, Me. Potatoes; heater car service, 446.
- New York, N. Y., to Bogoto, N. J. Waste paper, 162.
- New York, N. Y., from Chicago, Ill., and other points in central territory. Sublimed lead and pigments, 343.

- New York, N. Y., from Hammond, Ind., for export. Steel billets, 370.
- New York, N. Y., from Minneapolis, St. Paul, Minnesota Transfer, and Duluth, Minn., and Itasca and Superior, Wis. Grain and products; proportional rates, 665.
- New York, N. Y., from New Bedford Wharf, Mass., by water. Cotton yarns, 85.
- New York, N. Y., to Silica, East Liverpool, and Laughlin, Ohio. Flint pebbles and brick, 146.
- North Birmingham, Ala., to New Orleans, La., for export. Pig iron, 311.
- North Birmingham, Ala., from Port Ewen, N. Y. Blasting and electric blasting caps, 264.
- North Carolina from Arkansas, concentrated, compressed, and reshipped at Helena, Ark. Cotton, 637.
- North Carolina to Burlington, Iowa. Furniture, 267.
- North Carolina from East St. Louis, Ill. Fresh meat and packing-house products, 287.
- North Carolina from Shreveport, La., group, via Baton Rouge, La., and Natchez and Vicksburg, Miss. Petroleum and products, 564.
- North Dakota. Fresh fruits and vegetables; rating, 401.
- North Dakota from Missouri, Kansas, Oklahoma, and Arkansas. Asphalt, road oil, and wax tailings, 471.
- North Fort Worth, Tex., to Natchez, Miss. Horses and mules, 130.
- North Pacific coast to eastern destinations. Lumber and forest products; minima, 98.
- North River, New York, N. Y., from New Bedford Wharf, Mass., by water. Cotton yarns, 85.
- O. & K. Junction, Ky., to Cincinnati, Ohio, and central and western territories. Bituminous coal, 205.
- Oakland, Calif., from Chicago Heights, Ill. Iron foundry flasks, 149.
- Oakland, Calif., from various points, compressed and reshipped at Weleetka, Okla. Cotton, 299.
- Official territory. Scrap rubber; rating, 748.
- Official territory from Edgewater (Undercliff), N. J. Linseed oil, 522.
- Ohio from Ohio mines. Bituminous coal; divisions, 499.
- Ohio mines to Illinois, Indiana, Michigan, Missouri, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin. Bituminous coal; divisions, 499.
- Ohio River crossings from Kansas City, Kans., South St. Joseph, Mo., and Omaha, Nebr., destined to southeastern territory. Fresh meats, dressed poultry, and packing-house products, 157.
- Ohio River, points south of, from Pacific coast ports, stored in transit at Minnesota Transfer, Minn. Import traffic, 572.
- Oil City, La., to Okmulgee, Okla. Crude petroleum, 648.
- Oil City, Pa., to St. Louis, Mo., diverted or reconsigned to Ranger, Tex. Oil-well supplies, 151.
- Oilton, Okla., to Little Rock, Ark. Refined petroleum oils, 77.
- Oklahoma to Chicago, Ill., and St. Louis, Mo. Scrap aluminum and metals, 115.
- Oklahoma to Crete, Grand Island, and Hastings, Nebr., and Sioux City, Iowa. Gas and fuel oils, 507.
- Oklahoma to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Oklahoma to Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, and Canada. Asphalt, road oil, and wax tailings, 471.
- Oklahoma to Keokuk, Iowa. Gas oil, 517.
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- Oklahoma City, Okla., to Chicago, Ill., and St. Louis, Mo. Scrap aluminum and metals, 115.
- Oklahoma City, Okla., from Kansas City, Mo. Stock cattle, 45.
- Oklahoma City, Okla., from various points, compressed and reshipped to New Orleans, La. Cotton, 299.
- Oklahoma City, Okla., from Wichita Falls, Tex. Crude petroleum, 498.
- Okmulgee, Okla., from Texas and Louisiana. Crude petroleum, 648.
- Olden, Tex., from Parkersburg, W. Va., diverted or reconsigned at St. Louis, Mo. Oil-well supplies, 151.
- Omaha, Nebr., from Ardmore, S. Dak. Filtering clay, 545.
- Omaha, Nebr., from Chicago and South Elgin, Ill. Ground wormseed, 467.
- Omaha, Nebr., to Crete and Grand Island, Nebr., and Sioux City, Iowa. Fuel oil, 507.
- Omaha, Nebr., to Ohio River crossings, destined to southeastern territory. Fresh meats and dressed poultry, 157.
- Opelousas, La., from Louisiana, concentrated, compressed and reshipped to Pacific and Gulf ports. Cotton, 611.
- Oregon to Chicago, Ill., St. Louis, Mo., and points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin. Cedar shingles, 95.
- Oregon to eastern destinations. Lumber and forest products; minima, 98.
- Oregon to Spokane and Tacoma, Wash. Live stock, 125.
- Ottawa, Ill., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Ottumwa, Iowa, to Iowa and Nebraska, originating at West Clinton, Ind. Bituminous coal, 285.
- Pacific coast to and from Chicago, Ill. Chautauqua outfits, 492.
- Pacific coast from Chicago, Ill., via South Atlantic and Gulf ports, and Panama Canal. Class and commodity rates, 74.
- Pacific coast from Cincinnati, Ohio. Pipeless furnaces, with sheet-metal casings and caps, 305.
- Pacific coast ports from Louisiana, concentrated, compressed, and reshipped at Opelousas, La. Cotton, 611.
- Pacific coast ports to points south of the Ohio and Potomac Rivers and east of the Mississippi River, stored in transit at Minnesota Transfer, Minn. Import traffic, 572.
- Pacsteel, Calif., from Uniontown, Ala. Cotton twine and cotton factory sweepings, 403.
- Palos, Ohio, to Illinois, Indiana, Michigan, Missouri, New York, Ohio, Pennsylvania, West Virginia, and Wisconsin. Bituminous coal; divisions, 499.
- Paola, Kans. Switching, 548.
- Parkersburg W. Va., from Hancock, W. Va. Glass sand, 322.
- Parkersburg, W. Va., to St. Louis, Mo., diverted or reconsigned to Olden and Ranger, Tex. Oil-well supplies, 151.
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- Peekskill, N. Y., to Portland, Oreg. Table and shelf oilcloth, 589.
- Pe Ell, Wash., to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- Pekin, Ill., from Fort Wayne, Ind. Bar iron, 439.
- Pemeta, Okla., to Little Rock, Ark. Refined petroleum oils, 77.
- Pennsylvania from Ohio mines. Bituminous coal; divisions, 499.
- Peoria, Ill. Switching, 412.
- Peoria, Ill., to East Peoria, Ill. Switching, 412.
- Peoria, Ill., from New Orleans, La. Palm-kernel meal, 352.
- Perth Amboy, N. J., to Jersey City, N. J. Vaseline, 555.

- Philadelphia, Pa., from Aroostook County, Me. Potatoes; heater car service, 446.
- Philadelphia, Pa., from Baton Rouge, La. Copra oil, 852 (861).
- Pier 40, North River, New York, N. Y., from New Bedford Wharf, Mass., by water. Cotton yarns, 85.
- Pittsburg, Kans. Switching, 548.
- Pittsburgh, Pa., to Hillendahl, Bellaire, and Fairbanks, Tex. Wrought-iron pipe, 651.
- Pittsburgh, Pa., group, to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (240).
- Pittsfield, Mass., to Camas, Wash., and West Linn, Oreg. Pulp and paper making machinery, 631.
- Pleasanton, Kans. Switching, 548.
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- Ponca City, Okla., to Hutchinson, Kans., via Arkansas City, Kans. Fuel oil, 192.
- Port Chester, N. Y., from Aroostook County, Me. Potatoes; heater car service, 446.
- Porters, Wis., to Camp Grant, Ill. Fuel wood, 409.
- Port Ewen, N. Y., to North Birmingham, Ala. Blasting and electric blasting caps, 264.
- Portland, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Portland Oreg., from Cincinnati, Ohio. Pipeless furnaces, with sheet-metal casings and caps, 305.
- Portland, Oreg., from Peekskill, N. Y., and Rock Island, Ill. Table and shelf oilcloth, 589.
- Portland, Oreg., from Trenton, N. J., and Schenectady, N. Y. Steam turbines, and marine steam-turbine engines, 195.
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- Quincy, Ill., from Fort Wayne, Ind. Bar iron, 439.
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- Rains, Utah, to Salt Lake City, Utah. Bituminous coal, 118.
- Ranger, Tex., from eastern points, diverted or reconsigned at St. Louis, Mo., or Fort Worth, Tex. Oil-well supplies, 151.
- Ranger, Tex., from Glendale, Ariz. Condensed milk, 340.
- Ranger, Tex., to Okmulgee, Okla. Crude petroleum, 648.
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- Raymond, Wash., to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- Rayville, La., from Illinois mines. Bituminous coal, 1.
- Redel, Kans., to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Red Key, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Rhode Island from Aroostook County, Me. Potatoes; heater car service, 446.
- Rialto, Ohio, from Seelyville and Big Vein, Ind. Coal, 479.
- Rock Island, Ill., to Portland, Oreg. Table and shelf oilcloth, 589.

- Rock Springs district, Wyo., to Utah. Coal, 254.
- Rogers, Tex., to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Rolling Fork, Miss., to New Orleans, La. Copra cake, 352.
- Royster, Fla., from Brewster, Fla. Dry phosphate rock, 552.
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- St. Louis, Mo., from New Orleans and Baton Rouge, La. Palm-kernel oil or copra oil, 352.
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- St. Louis, Mo., from Texas, Oklahoma, and Arkansas. Scrap aluminum and metals, 115.
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- Schenectady, N. Y., to West Linn, Oreg. Pulp and paper making machinery, 631.
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- Seattle, Wash., from Cincinnati, Ohio. Pipeless furnaces, with sheet-metal casings and caps, 305.
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- Seattle, Wash., from Schenectady, N. Y. Steam turbines, 195.
- Seattle, Wash., from various points, compressed and reshipped at Weleetka, Okla. Cotton, 299.
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- Sesser, Ill., from West Frankfort, Ill. Ground rock or shale dust, 584.
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- Standardville, Utah, to Salt Lake City, Utah. Bituminous coal, 118.
- Steubenville, Ohio, group to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (240).
- Stockton, Calif., from Lucas, Kans., inspected and diverted at Salina, Kans. Wheat, 559.
- Stoughton, Wis., from Cragin, Ill. Tin cans, 307.
- Streator, Ill., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Sugarland, Tex., to Texas common points. Refined sugar, 25.
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- Sunnyside, Utah, to Salt Lake City, Utah. Bituminous coal, 118.
- Sunset, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
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- Sycamore, Ill., from Fort Wayne, Ind. Bar iron, 439.
- Syracuse, N. Y., to Wilmington, Del. Explosives, 419.
- Tacoma, Wash., to Baltimore, Md. Pyrethrum flowers, 292.
- Tacoma, Wash., from Chicago, Ill. Steel bed parts, 211.
- Tacoma, Wash., from Louisiana, concentrated, compressed, and reshipped at Opelousas, La. Cotton, 611.
- Tacoma, Wash., from Montana, Utah, Idaho, California, Oregon, and Washington. Live stock, 125.
- Taft, Calif., from Woodlawn, Pa., diverted in transit to Des Moines, Calif., and then to Seguro, Calif. Wrought iron pipe, 143.
- Talcville, N. Y., to Lucaston, N. J. Talc, 581.
- Tallulah, La., from Illinois mines. Bituminous coal, 1.
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- Tennessee from East St. Louis, Ill. Fresh meat and packing house products, 287.
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- Terre Haute, Ind., from Clinton and Brazil districts, Ind. Bituminous coal, 435.
- Texas to Chicago, Ill., and St. Louis, Mo. Scrap aluminum and metals, 115.
- Texas to Franklin and Lacy Station, Pa. Crude oil by pipe line, 458.
- Texas from Glendale, Ariz. Condensed milk, 340.
- Texas from Illinois mines. Bituminous coal, 1.
- Texas to Natchez, Miss. Horses and mules, 130.
- Texas to Okmulgee, Okla., and Independence, Kans. Crude petroleum, 648.
- Texas to and from Texas, Louisiana, and Arkansas. Riprap, 475.
- Texas common points from Sugarland, Tex. Refined sugar, 25.
- Texas oil fields from eastern points. Oil-well supplies, 151.
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- Trenton, N. J., to Dublin, Tex., diverted or reconsigned to Gorman, Tex. Oil-well supplies, 151.
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- Trenton, N. J., to West Linn, Oreg. Pulp and paper making machinery, 631.
- Trevor, Wis., to Chicago, Ill. Ice, 309.
- Trimble, Tenn., from Miston, Tenn., to be manufactured and reshipped. Hardwood logs, 427.
- Troy, N. Y., from Aroostook County, Me. Potatoes; heater car service, 446.
- Trunk line territory from Minneapolis, St. Paul, Minnesota Transfer, and Duluth, Minn., and Itasca and Superior, Wis. Grain and products; proportional rates, 665.
- Tyner, Tenn., to Chattanooga, Tenn. Excelsior bolts, 165.
- Tyrone, Pa., from Thomasville, Pa. Limestone, 534.
- Undercliff, N. J., to official territory. Linseed oil, 522.
- Uniontown, Ala., to Pacsteel, Calif. Cotton twine and cotton factory sweepings, 403.
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- Utah to Spokane and Tacoma, Wash. Live stock, 125.
- Utah from Spokane, Portland & Seattle Ry. points. Lumber and articles, 71.
- Utah from Washington. Lumber and forest products, 659.
- Veedersburg, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Verde, Ariz., from Clarkdale, Ariz. Ore, 271.
- Vermont from Aroostook County, Me. Potatoes; heater car service, 446.
- Vicksburg, Miss., from Shreveport, La., group, destined to southeastern territory. Petroleum and products, 564.
- Vincennes, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- Vincennes, Ind., from Wheatland, Ind. Bituminous coal, 443.
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- Vineland, N. J., to Los Angeles, Calif. Paper bottle-neck wrappers or caps, 155.
- Virginia to Burlington, Iowa. Furniture, 267.
- Virginia from East St. Louis, Ill. Fresh meat and packing house products, 287.
- Virginia mines to Indiana and Illinois, and St. Louis, Mo. Bituminous coal, 29.
- Waco, Tex., from Glendale, Ariz. Condensed milk, 340.
- Walville, Wash., to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- Warner, Utah, from Spokane, Portland & Seattle Ry. points. Lumber and articles, 71.
- Washington to Chicago, Ill., St. Louis, Mo., and points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin. Cedar shingles, 95.
- Washington to eastern destinations. Lumber and forest products; minima, 98.
- Washington to Idaho, Utah, and Colorado. Lumber and forest products, 659.
- Washington to Spokane and Tacoma, Wash. Live stock, 125.
- Washington, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Watertown, N. Y., to Camas, Wash., and West Linn, Oreg. Pulp and paper making machinery, 631.
- Watsontown, Pa., group to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (240).
- Wauzeka, Wis., to Camp Grant, Ill. Fuel wood, 409.
- Weleetka, Okla., from various points, compressed and reshipped to various destinations. Cotton, 299.
- Welsh, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
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- West Clinton, Ind., to Iowa and Nebraska, via Chicago, Ill., and Ottumwa, Iowa. Bituminous coal, 285.
- Western territory from O. & K. Junction, Ky. Bituminous coal, 205.
- Western trunk line territory from Missouri, Kansas, Oklahoma, and Arkansas. Asphalt, road oil, and wax tailings, 471.
- West Frankfort, Ill., to Christopher and Sesser, Ill. Ground rock or shale dust, 584.
- West Linn, Oreg., from points east of the Missouri River. Pulp and paper making machinery, 631.
- West Melcher, Ind., to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (239).
- West Montezuma, Ind., from Clinton and Brazil districts, Ind. Bituminous coal, 435.
- West Virginia. Bituminous coal; car distribution, 167.
- West Virginia from Ohio mines. Bituminous coal; divisions, 499.
- West Virginia mines to Indiana and Illinois, and St. Louis, Mo. Bituminous coal, 29.
- Wheatland, Ind., to Vincennes, Ind. Bituminous coal, 443.
- Wheeling, W. Va., to St. Louis, Mo., diverted or reconsigned to Ranger, Tex. Oil-well supplies, 151.
- Whiteville, La., to Opelousas, La., concentrated, compressed, and reshipped to Pacific and Gulf ports. Cotton, 611.
- Wichita Falls, Tex., from Glendale, Ariz. Condensed milk, 340.
- Wichita Falls, Tex., to Oklahoma City and Cushing, Okla. Crude petroleum, 496.
- Willapa Harbor points to Idaho, Utah, and Colorado. Lumber and forest products, 659.

- Wilmington, Del. Explosives; delivery and demurrage charges, 419.
- Wilson, Okla., to Fort Worth, Tex. Beef cattle, 303.
- Winston-Salem, N. C., to Burlington, Iowa. Furniture, 267 (268).
- Wisconsin to Camp Grant, Ill. Fuel wood, 409.
- Wisconsin from Fort Wayne, Ind. Bar iron, 439.
- Wisconsin from Illinois. Coal, 17.
- Wisconsin from Missouri, Kansas, Oklahoma, and Arkansas. Asphalt, road oil, and wax tailings, 471.
- Wisconsin from Ohio mines. Bituminous coal; divisions, 499.
- Wisconsin from Oregon, Washington, and British Columbia. Cedar shingles, 95.
- Wolcottville, Ind., to Chicago switching district. Sand and gravel, 92.
- Woodlawn, N. Y., from Aroostook County, Me. Potatoes; heater car service, 446.
- Woodlawn, Pa., to St. Louis, Mo., diverted or reconsigned to Eastland and Ranger, Tex. Oil-well supplies, 151.
- Woodlawn, Pa., to Taft, Calif., diverted in transit to Des Moines, Calif., and then to Seguro, Calif. Wrought-iron pipe, 143.
- Woodman, Wis., to Camp Grant, Ill. Fuel wood, 409.
- Wyandotte, Mich., to Salem and Millville, N. J. Soda ash, 643.
- Wynnborg, Tenn., to Bondurant, Ky. Hardwood logs, 427.
- Wyoming mines to Utah. Coal, 254.
- York, Pa., to West Linn, Oreg. Pulp and paper making machinery, 631.
- Youngstown, Ohio, group to Chicago, Ill., and Milwaukee, Wis. Brick, hollow building tile, and other clay products, 213 (240).

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[Numbers in parentheses following citations indicate pages on which subjects are considered.]

ABANDONMENT.

In view of the importance to the public of the transportation service rendered by the Missouri & North Arkansas R. R. Co., operation of which has been discontinued, such railroad found to be a public necessity in its entirety, and operation thereof should be resumed and continued. Division of Joint Rates and Fares of M. & N. A. R. R. Co., 47 (52-53).

ABNORMAL CONDITIONS.

Practices of the Pennsylvania and the Pittsburgh & Lake Erie railroads, during period of labor troubles and abnormal conditions following Federal control, in the distribution of coal cars to mines on the Monongahela and Morgantown & Wheeling railways, found not to have been unreasonable under the circumstances and conditions existing, and while discrimination did exist it was not such as to constitute undue prejudice in favor of mines on the Pennsylvania and Pittsburgh & Lake Erie. Northern West Virginia Coal Operators' Assn. v. P. & L. E. R. R. Co., 167.

ABSORPTION. *See also* SWITCHING.

Contention that the Illinois Central's pier track No. 1 in Chicago, Ill., should be listed in Lowrey's tariff as an industry track, under which line-haul carriers would then absorb the switching charge of the Illinois Central, *Held*: Point of delivery is an l. c. l. freight station which was opened to complainant's shipments as affording the only practicable point of delivery. Record affords no basis for listing this pier track as an industry track and switching charge thereto found not unreasonable. Great Lakes Dredge & Dock Co. v. Director General, as Agent, 274 (276).

Failure of carriers to absorb interchange switching charges at Harvard, Ill., found not unreasonable, discriminatory, or unduly prejudicial. Carriers absorb no switching charges at Harvard, and in view of the dissimilarity of conditions between that point and at Aurora, Sterling, and Freeport, Ill., and Janesville, Wis., where competitors are located and where under reciprocal arrangements carriers absorb the switching charges of connecting lines, the different practices are not shown to result in undue prejudice. Hunt, Helm, Ferris & Co. v. C. & N. W. Ry. Co., 283.

In the absence of unjust discrimination or undue prejudice a carrier can not be compelled to absorb the switching charges of a connecting line. *Id.* (284).

Failure of defendants to absorb out of the through rates the entire compress charge on shipments of cotton compressed at Welcetka, Okla., and reshipped to interstate destinations, thereby compelling complainants to make payments to compress companies in addition to transportation charges, found unreasonable. Tariffs of carriers were subsequently amended to provide for the absorption of the entire charge and rates have generally included the entire compress charge and are in reality based on the inclusion of a reasonable charge for that service. Reparation awarded. Anderson, Clayton & Co. v. F. S. & W. R. R. Co., 290.

ACCOUNTING.

The difficulty of segregating the accounts of branch lines from those of main lines is not entitled to great weight in determining the reasonableness of rates. *Smith v. I. C. R. R. Co.*, 427 (433).

ADDITIONAL CHARGE.

Failure of defendants' to absorb out of the through rates the entire compress charge on shipments of cotton compressed at Weleetka, Okla., and reshipped to interstate destinations, thereby compelling complainants to make payments to compress companies in addition to transportation charges, found unreasonable. Tariffs of carriers were subsequently amended to provide for the absorption of the entire charge and rates have generally included the entire compress charge and are in reality based on the inclusion of a reasonable charge for that service. Reparation awarded. *Anderson, Clayton & Co. v. F. S. & W. R. R. Co.*, 299.

Charge in addition to line haul rates assessed by the P. & R. Ry. for delivery by car float of shipments of explosives to vessels in Wilmington Harbor, Wilmington, Del., found illegal if applied to shipments for export delivered by float to vessels tied up at piers on the Delaware side of Delaware River within the limits of Wilmington Harbor, as described in the tariff. Applicable tariff provided for the imposition of such charge on shipments floated to vessels in midstream or at piers on the New Jersey shore opposite Wilmington. *Republic of France v. Director General*, as Agent, 419.

ADJACENT FOREIGN COUNTRY. See CANADA.**ADJUSTMENT OF RATES. See also RELATIONSHIP OF RATES.**

Class rates proposed by the American Ry. Express Co., for application between points in the United States and points in Canada found justified in so far as the divisions accruing for that part of the transportation between points in the United States and the international boundary are not in excess of rates prescribed or permitted by the Commission for local hauls. Such readjustment results in some reductions, and in no instance do the rates proposed equal the aggregate of intermediates. *Express Class Rates Between United States and Canada*, 20.

Present interstate rates on article in the uniform brick list, from Indiana-Illinois producing points, and from Canton, Ohio, and points grouped therewith or related thereto, to Chicago, Ill., and Milwaukee, Wis., and points taking the same rates, found unjust and unreasonable to extent they exceed rates constructed in accordance with the differentials over or under the Danville-Attica and Canton group rates, herein prescribed. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (239-240).

Under the general readjustment of rates herein required the present rate on articles in the uniform brick list from Pittsburgh, Pa., to New York, N. Y., found unreasonable and reasonable maximum base rate to apply from the Pittsburgh group to New York prescribed. *Id.* (245).

Under the general readjustment of rates herein prescribed on articles in the uniform brick list, rates between Chicago, Ill., and New York, N. Y., and from percentage groups west of the Pittsburgh group to New York found unreasonable. Reasonable maximum base rate and percentages thereof prescribed. *Id.* (246).

ADJUSTMENT OF RATES—Continued.

Rates on articles in the uniform brick list from Perth Amboy district and Winslow Junction, N. J., to Portland, Me., and from Waterloo, Va., to Boston, Mass., and Albany, N. Y., which will not increase the spreads existing prior to *Increased Rates, 1920*, 58 I. C. C., 220, between Clearfield, Pa., group, on the one hand, and Perth Amboy, Winslow Junction, and Waterloo, on the other, prescribed. Id. (248-249).

Rates on articles in the uniform brick list from Waterloo, Va., to New York, N. Y., for Pennsylvania delivery, prescribed. In no event should the rate from Waterloo to other stations in New York exceed the rate from Clearfield, Pa., to the same stations. Id. (249).

Minimum charges on l. c. l. shipments, under General Order No. 28 of the director general, subsequently readjusted by application of reductions, found not unreasonable. Failure of carriers to strictly observe the terms of that order, filed with the commission by the President, through his duly appointed agent, does not establish unreasonableness. *Swift & Co. v. Director General, as Agent*, 287.

ADMINISTRATIVE RULINGS. See CONFERENCE RULINGS; RULES OF PRACTICE; TARIFF CIRCULAR 18-A.

ADVANCE IN RATES. See also DOUBLE INCREASE.

In General:

Failure to adhere strictly to the terms of General Order No. 28 of the director general does not invalidate the published rates. The controlling question is whether the published rates were unreasonable or otherwise unlawful. *Rock Products Traffic League v. B. & O. R. R. Co.*, 146 (148).

The Chicago-New York rate on which articles in the uniform brick list from points west of the Pittsburgh group are based, has by reason of successive general increases, become too high to permit the free movement of this desirable heavy-loading traffic between central and trunk-line territories, a situation which detracts from, rather than adds to, the revenues of the carriers. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (245-246).

The raising of the rate level by the director general under General Order No. 28, and again by the commission under *Increased Rates, 1920*, 58 I. C. C., 220, were necessitated by increases in operating expenses. The latter have now partially receded. The rate increases were general and justified by the increase in general cost of service, and with decrease in that cost a rate decrease, also general, is justified. *Reduced Rates, 1922*, 676 (734).

Asphalt, road oil, and wax tailings: Proposed change in the application of rates on, from producing points in Missouri, Kansas, Oklahoma, and Arkansas to points in western trunk-line territory and other points, which would increase the rates on those commodities to the rates on petroleum fuel oil, gas oil, and crude oil, found not justified. Because of difference in estimated weights, some of the present rates on road oil produce charges higher than on refined oil and if proposed schedules should become effective, this condition would be accentuated. *Petroleum Products to Iowa Points*, 471.

ADVANCE IN RATES—Continued.

Bags, burlap and gunny: Proposed cancellation of l. c. l. commodity rates, and application of higher class rates in lieu thereof, on, from St. Louis, Mo., East St. Louis, Ill., and upper Mississippi River crossings to destinations in central territory found justified. Burlap and Gunny Bags from St. Louis, 587.

Fruits: Proposal of the C., M. & St. P. Ry. Co. to eliminate the Green Fruit Auction Co. from list of industries on its rails at Chicago, Ill., and to apply switching charges on fruits destined thereto when the road haul has been performed by other carriers, found justified. Fact that switching charge will in some cases accrue against the traffic does not of itself constitute a ground for condemning the schedule; several routes will be available for delivery at the Chicago rates and the auction house will be substantially as well circumstanced, from the standpoint of free terminal delivery, as are other auction houses. Green Fruit Auction Co.'s Elimination from Industries, 89.

Fruits and vegetables: Proposed cancellation of exception to classification in western trunk-line territory providing for third-class rating on mixed carloads of fresh fruits and vegetables, minimum 20,000 pounds, the effect of which would be to increase the c. l. minima applicable to such shipments, found not justified. Cancellation of Rating on Fruits and Vegetables, 401.

Grain and seeds: Proposed cancellation of transit arrangement at Schuyler, Nebr., on grain and seeds originating on the C., B. & Q. R. R., which would result in the application of combination rates higher than those now applicable, found justified on shipments moving via Columbus, Nebr., but not as to shipments moving via Fremont, Nebr. Transit Privileges on Grain at Schuyler, Nebr., 550.

Import traffic: Proposed cancellation of storage in transit arrangement at Minnesota Transfer, Minn., on import traffic from Pacific coast ports destined, with certain exceptions, to all points south of the Ohio and Potomac and east of the Mississippi rivers, the effect of which would be to restrict the movement to routes via the Gulf and South Atlantic ports, found not justified. Storage-in-Transit Rules at Minnesota Transfer, 572.

Lumber: Proposed cancellation of joint rates on lumber and articles taking the same rates from points on the Spokane, Portland & Seattle to destinations in Montana, Idaho, Utah, and east on the Union Pacific system and connections, which would result in the application of higher combination rates, found not justified except as to points of origin west of Vancouver, Wash. Elimination of Routing on Lumber, 71.

Oil, crude: Rates for the transportation of, by pipe lines from wells in Kansas, Oklahoma, and Texas to Franklin and Lacy Station, Pa., established since the act declaring pipe lines to be common carriers was held valid in *The Pipe Line cases*, 234 U. S., 548, and subsequently increased 25 per cent, found not unreasonable for the service performed. *Brundred Bros. v. P. P. L. Co.*, 458.

Pebbles and brick, flint:

Following *Silica Sand Producers Asso.*, 64 I. C. C., 802, rates on imported flint pebbles and flint brick, increased 25 per cent and 2 cents, respectively, under General Order No. 28 of the director general, found not unreasonable as compared with rates on other commodities which were accorded a lower flat increase under the terms of that order. *Rock Products Traffic League v. B. & O. R. R. Co.*, 146.

ADVANCE IN RATES—Continued.**Pebbles and brick, flint—Continued.**

Shipper compared the rates on, with lower rates on other commodities primarily for the purpose of showing that the rates on such other commodities were accorded lower increases than flint pebbles and brick under General Order No. 28 of the director general. *Held*: Such comparisons alone are not conclusive that the higher rates are unreasonable. *Id.* (148).

Sand and gravel: Proposed increased rates on, from Wolcottville, Ind., to Chicago, Ill., which are not unreasonably high in comparison with rates from other Indiana producing points to Chicago, found justified. Sand and Gravel from Wolcottville, 92.

Switching charges:

Following *Interchange Switching at Wichita*, 61 I. C. C., 205, proposed increased charges for interchange switching at certain Missouri Pacific stations in Kansas and Missouri, found not justified. While present charges may be low, record is insufficient to warrant a definite finding of what would be reasonable. Switching Charges in Kansas and Missouri, 548.

Increased charges for switching at Kansas City, Mo.-Kans., proposed by the St. Louis-San Francisco Ry., Missouri Pacific R. R., and Kansas City Southern Ry., found not justified. Cost studies submitted by carriers were based upon a formula agreed upon after conference, but the volume of business during the test period was subnormal and a considerable portion of the costs included in the studies is more or less constant and varies but little with the volume of business. Furthermore, operating costs should be coming down, and certain road-haul rates have been reduced. Reciprocal Switching at Kansas City, 591.

ADVANTAGES AND DISADVANTAGES. See LOCATION.**AGENT.**

Following *Rutherford-Brede Co.*, 61 I. C. C., 515, failure of the director general to accord switching service on intrastate shipments of ore at Clarkdale, Ariz., during Federal control, or to reimburse complainant for furnishing said service as the agent of the director general found not in violation of the interstate commerce act or the Federal control act. Any redress to which complainant may be entitled found to rest with the courts. *United Verde Extension Mining Co. v. Director General*, as Agent, 271.

Where a shipper acts as agent of line-haul carriers for the performance of a service it is entitled to compensation for what its services under that employment are worth, and may sue for it in a court of competent jurisdiction. *Id.* (272).

AGGREGATE OF INTERMEDIATES. See THROUGH AND LOCAL.**AGREEMENT. See CONTRACT.****ALLOWANCES.**

Failure of defendants to perform, or to make an allowance for the service of spotting cars at points of loading and unloading within complainant's plant at Marcus Hook, Pa., within the Philadelphia, Pa., rate district, while performing such service for competitors in the same rate district without charge in addition to the district rates, found not to have been unreasonable, discriminatory, or unduly prejudicial. No request has ever been made by complainant upon the trunk-line carriers to perform a general spotting service at its plant. *Sun Co. v. Director General*, as Agent, 11.

ALLOWANCES—Continued.

Following *Rutherford-Brede Co.*, 61 I. C. C., 515, failure of the director general to accord switching service on intrastate shipments of ore at Clarkdale, Ariz., during Federal control, or to reimburse complainant for furnishing said service as the agent of the director general found not in violation of the interstate commerce act or the Federal control act. Any redress to which complainant may be entitled found to rest with the courts. *United Verde Extension Mining Co. v. Director General, as Agent*, 271.

Where a shipper acts as agent of line-haul carriers for the performance of a service, it is entitled to compensation for what its services under that employment are worth, and may sue for it in a court of competent jurisdiction. *Id.* (272).

Refusal of carriers to increase per car allowance for spotting service performed by complainant within its plant at Sharon, Pa., found not to result in unreasonable rates or to subject complainant to undue prejudice or unjust discrimination. Record fails to show extent to which allowance is less than would be just and reasonable, or extent to which it falls short of reimbursing complainant for the cost of performing services substantially like those performed by carriers for competitors without charge. *Stewart Furnace Co. v. P. R. R. Co.*, 528.

No legal obligation rests upon carriers to perform switching and spotting services solely at a shipper's convenience, and a shipper is not entitled to an allowance for these services if the carrier is ready and willing to perform them, but is not permitted to do so by the shipper. Shipper's refusal to permit carriers to perform such service would absolve them from the obligation to do so. *Id.* (530).

The act makes it unlawful for carriers to allow more than just and reasonable compensation to an industry for transportation services or facilities furnished by it. *Id.* (532).

The failure or refusal of carriers to perform spotting service for a shipper, or to reimburse it for the cost thereof, while performing a like service without charge for others similarly situated, is unduly prejudicial to such shipper and unduly preferential of its competitors. *Id.* (533).

The failure or refusal of carriers to perform for a shipper a spotting service included in line-haul rates or to make an allowance therefor equal to the cost to such shipper of performing the service or to what the cost to carriers would be if they should perform it, whichever may be lower, would subject such shipper to unreasonable rates and charges for the line-haul service. *Id.* (533).

AMBIGUOUS TARIFF.

Intention of tariff framers can not be considered, and if there is ambiguity in tariffs they should be construed against the framer. *Northwest Steel Co. v. Director General, as Agent*, 195 (198).

ANALOGOUS ARTICLES. See also COMPARATIVE RATES.

While some forms of hollow building tile are more susceptible to damage than brick, the additional risk does not appear to be sufficient to warrant a difference in rates, particularly when it is considered that the average value of hollow building tile falls well within the range of values of brick. Hollow building tile is made from the same raw materials as brick, is used largely for the same purposes, and the various transportation elements are substantially the same. *National Paving Brick Mfrs. Assn. v. A. & V. Ice Co.*, 213 (220).

ANY QUANTITY RATES. See LESS-THAN-CARLOADS.

ARBITRARIES. See also DIFFERENTIALS.

For many years the rate on soda ash from Detroit and Wyandotte, Mich., to Salem and Millville, N. J., was constructed on the basis of a 5-cent arbitrary over the rate to Philadelphia, Pa. Under General Order No. 28 of the director general arbitrary increased to 6.5 cents. Subsequently former arbitrary restored via various routes and later via route of movement. *Held*: Rate charged during period of movement when lower rate in effect via routes other than route of movement found not unreasonable. *Salem Glass Works v. Director General, as Agent*, 648.

Contention that an increase in an arbitrary, under General Order No. 28 of the director general, was illegal because published in a supplement to a loose-leaf tariff which provided in accordance with Tariff Circular 18-A that no supplement would be issued except to cancel the tariff, not sustained. In connection with increases provided under the general order, the commission temporarily waived the rule requiring all changes in and additions to tariffs issued in loose-leaf form to be made by re-printing both pages of the leaf upon which change is made. *Id.* (643).

"AS NEARLY AS MAY BE."

Words as used in section 15a of the act, construed. *Reduced Rates, 1922*, 676 (680).

ASSIGNMENT.

Following *Seaboard Air Line Ry. v. U. S.*, decided June 6, 1921, the transfer of a claim for reparation from a copartnership to a corporation, found not within the inhibition of section 3477 of the United States Revised Statutes, forbidding assignments of claims against the United States. *Fairmont Creamery Co. v. Director General, as Agent*, 507 (515-516).

BACK HAUL.

In computing distance upon which the divisions to be received by a common carrier short line are determined, the out-of-line or back-haul movement to track scales should not be included. *Divisions Received by Brimstone R. R. & Canal Co.*, 375 (388).

BAD ORDER CARS.

Table showing by months for years 1920 and 1921 percentage of freight cars unserviceable. *Reduced Rates, 1922*, 676 (692).

BAGGAGE.

Rules and regulations providing for the free transportation of one special baggage car containing paraphernalia, if the persons traveling on the same train with it number 25 or more, and applicable to Chautauqua outfits moving from Chicago, Ill., to the Pacific coast and return, found not unreasonable or unduly prejudicial. Complainants' inability to avail themselves of the rule is due to the complete change of program at each point daily, while theatrical companies which take advantage of the rule have a weekly change and move their personnel en masse. *Ellison-White Chautauqua System v. Director General, as Agent*, 492.

The free transportation of a limited amount of baggage is an incident of, and is included within, the passenger-fare contract. Present passenger transportation fares generally permit the free transportation of but 150 pounds of baggage per person. *Id.* (495).

BLANKET RATES. See GROUP RATES.

BONDS.

The meeting of bond maturities can not be considered an item of operating expense. *Marion & Eastern R. R. Co. v. C. & E. I. R. R. Co.*, 17 (19).

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BONDS—Continued.

Carriers should not continue to provide for all needed capital by successive bond issues. Issuance of bonds in a disproportionate degree unduly increases fixed charges and tends to weaken the credit of the carriers. In such a process eventually a point must be reached where no new capital can be raised, except for short terms at high rates. *Reduced Rates 1922*, 676 (682).

BOTH DIRECTIONS. *See also EASTBOUND AND WESTBOUND.*

Class rates from Memphis, Tenn., to Birmingham, Ala., found unreasonable and unduly prejudicial to extent that they exceed the contemporaneous rates in the reverse direction. Transportation conditions are substantially similar and there should be no material disparity in rates. *Birmingham Traffic Bureau v. St. L.-S. F. Ry. Co.*, 108.

Fifth-class rate on beer from Duluth, Minn., to East Dubuque and Fulton, Ill., found not unreasonable as compared with lower commodity rate from Chicago, Ill., to Duluth, in the opposite direction, or as compared with commodity rate subsequently established in both directions. The volume of movement northbound from Chicago has been greatly in excess of the southbound movement from Duluth and the class rates from Chicago to Duluth reflect the competition of several rail lines and also water competition. *Duluth Brewing & Malting Co. v. N. P. Ry. Co.*, 315.

Fifth-class rate on steel plates from Galveston, Tex., to New Orleans, La., found unreasonable to extent it exceeded rate on chain, cable, wire, steel bars, angles, tin plate, and roofing and sheet iron, contemporaneously in effect in the opposite direction. Reparation awarded. *Republic of France v. Director General*, as Agent, 424.

The justification for a rate in one direction lower than in the opposite direction was based on the volume of traffic, but it was admitted that there has been no substantial movement in either direction. *Held*: Under such circumstances, and where the conditions affecting the transportation in both directions are substantially the same, there should be no material disparity in the rates. *Id.* (426).

BRANCH LINE POINTS.

Rates on bituminous coal from mines on the Ohio & Kentucky Ry. near O. & K. Junction, Ky., to Cincinnati, Ohio, and points in central and western territories found unreasonable to extent they exceeded the district rates from O. & K. Junction and points on the main line, and on branch lines or spur connections of the L. & N. Measure of reasonable maximum rates prescribed. *Riverside Coal Co. v. Director General*, as Agent, 205.

So-called net rates on hardwood logs, for manufacture and reshipment, from Proctor City, Wynnburg, Miston, and Lenox, Tenn., points on the Chicago, Memphis & Gulf, a branch line, to Bondurant, Ky., found not unreasonable or unduly prejudicial as compared with the distance scale of rates applicable from main line points. Rates on like traffic from Menglewood, Tenn., to Bondurant, Ky., and from Miston, Tenn., to Trimble, Tenn., found unreasonable. Reasonable maximum rate from Miston to Trimble on interstate traffic prescribed and reparation awarded. *Smith v. I. C. R. R. Co.*, 427.

BRANCH LINES.

There should be a higher rate of return on the investment to cover amortization on a branch line, which will have only junk value when the timber is exhausted, than upon a branch line which serves a growing agricultural community. The latter produces traffic for the main line, although it may not show an individual profit. The difficulty of segregating the accounts of branch lines is not entitled to great weight. *Smith v. I. C. R. R. Co.*, 427 (433).

For rate-making purposes, the Chicago, Memphis & Gulf R. R. Co., should be considered as a branch line of the Illinois Central. It does not follow that rates on such branch line should be the same as upon the main lines. *Id.* (433).

BREAK UP SERVICE. See **MAKE UP AND BREAK UP SERVICE.**

BRICK LIST.

It is, and will be, unreasonable for defendants to fail to maintain a uniform brick list under which face, fire, and paving brick, hollow building tile, and other specified clay products, not including common brick, shall be accorded equal rates from and to the same points for interstate transportation from and to all points in the United States east of the Rocky Mountains, subject to a c. l. minimum weight not exceeding 60,000 pounds, marked capacity of car to govern. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213.

Other clay products having transportation characteristics similar to those articles in the uniform brick list not excluded from the list, but flue lining, drain tile, sewer pipe, and articles of similar nature should not be included. *Id.* (220).

BRIMSTONE RAILROAD & CANAL COMPANY.

Found to be a common carrier subject to the act. Divisions Received by Brimstone R. R. & Canal Co., 375 (386).

History and description. *Id.* (377).

BULK.

Rule requiring shipments of crude oil for transportation by pipe line to be tendered in quantities of not less than 100,000 barrels found unreasonable to extent that it requires tenders in excess of 10,000 barrels. Minimum fixed by carriers reserves the pipe lines to a few large shippers and essentially deprives the lines of the common carrier status with which they were impressed by the act. Minimum herein fixed would be sufficiently low to enable all producers and refiners to utilize the pipe lines and would be sufficiently high to mitigate operating difficulties. *Brundred Bros. v. P. P. L. Co.*, 458.

The transportation of oil by pipe line is essentially a bulk business, and that fact must not be lost sight of in determining the minimum which will be accepted for transportation. The pipe lines can not be successfully operated on a dribble basis, and there is a reasonable minimum below which they should not be required to accept oil for transportation; but the minimum must be reasonable. *Id.* (466).

While there are exceptions, articles in inner containers are generally rated higher than when shipped in bulk, inasmuch as the better grades are usually shipped in inner containers, and the value of articles so shipped, as a rule, is higher per unit than when shipped in bulk. *Traffic Bureau of Nashville v. L. & N. R. R. Co.*, 623 (626).

BURDEN OF PROOF. *See also* **PROOF.**

Contention that inasmuch as carriers propose reductions in rates they are under no burden of proof as to the reasonableness or propriety of such proposed reductions; and that order of suspension was improperly made and should be vacated. *Held*: The proponent of a change in lawfully existing rates must be prepared to justify the change, if called in question. The act provides for prevention as well as for cure, and undue prejudice and preference may be brought about as readily by reducing one as by increasing the other of two related rates. *Sublimed Lead to Trunk Line Points*, 343 (345).

BURDEN OF TRANSPORTATION. *See* **WHAT TRAFFIC WILL BEAR.**
CANADA.

Class rates proposed by the American Ry. Express Co., for application between points in the United States and points in Canada found justified in so far as the divisions accruing for that part of the transportation between points in the United States and the international boundary are not in excess of rates prescribed or permitted by the commission for local hauls. Such readjustment results in some reductions and in no instance do the rates proposed equal the aggregate of intermediates. *Express Class Rates Between United States and Canada*, 20.

The commission must regard the local rates of express carriers between border points and other points in the United States and between points wholly within the Dominion of Canada as just and reasonable. *Id.* (24).

Following *West Coast Lumbermen's Asso.*, 44 I. C. C., 443, charges on cedar shingles from points in British Columbia to points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin found unreasonable to extent that they exceeded 65 cents per 100 pounds. Reparation awarded. *Bloedel-Donovan Lumber Co. v. Director General*, as agent, 95.

The interstate commerce act, as amended by the transportation act, 1920, applies to common carriers engaged in the transportation of property only in so far as such transportation takes place within the United States. *Id.* (96).

Reparation awarded against defendant carriers which engaged in the transportation within the United States for the exaction of an unreasonable rate on shipments moving from points in Canada to points in the United States. *Id.* (97).

CANCELLATION.

In publishing tariffs carrier failed to show as clearly as it should have done that a switching rate superseded a group rate formerly in effect. Contention that switching charge was not legally established because item in which that charge was published did not specifically refer to and cancel the line-haul rate, tariff naming that rate was not at the same time correspondingly amended in accordance with the provisions of rule 8 (a) of Tariff Circular 18-A, and that shipments were undercharged, not sustained. *Louis Werner Stave Co. v. Director General*, as Agent, 395 (396-398).

CAR DISTRIBUTION.

Practices of the Pennsylvania and the Pittsburgh & Lake Erie railroads, during period of labor troubles and abnormal conditions following Federal control, in the distribution of coal cars to mines on the Monongahela and Morgantown & Wheeling railways found not to have been unreasonable under the circumstances and conditions existing, and while discrimination did exist it was not such as to constitute undue prejudice in favor of mines on the Pennsylvania and Pittsburgh & Lake Erie. *Northern West Virginia Coal Operators' Asso. v. P. & L. E. R. R. Co.*, 167.

Duty of carriers under paragraph 12, and power of commission under paragraph 15, of section 1 of the act, governing the distribution of cars, discussed. *Id.* (171).

Distribution of empty cars to complainant for shipment of hay found not unduly prejudicial as compared with the distribution to other shippers at Forestburg and Woonsocket, S. Dak. Complainants, foreseeing an unusual demand for hay, began purchasing in large quantities, and carriers could not have been expected to take care of their sudden and increasing demands for cars immediately and fully to the exclusion of other shippers. To have done so might have subjected them to a charge of undue preference. *Gaynor Bros. v. Director General, as Agent*, 541.

CAR FLOATING.

Charge in addition to line-haul rates assessed by the P. & R. Ry, for delivery by car float of shipments of explosives to vessels in Wilmington Harbor, Wilmington, Del., found illegal if applied to shipments for export delivered by float to vessels tied up at piers on the Delaware side of Delaware River within the limits of Wilmington Harbor, as described in the tariff. Applicable tariff provided for the imposition of such charge on shipments floated to vessels in midstream or at piers on the New Jersey shore opposite Wilmington. *Republic of France v. Director General, as Agent*, 419.

CAR FURNISHING.

Based upon mathematical calculations of cars and containers used, charges on certain shipments of cotton twine and cotton-factory sweepings found to have been based on minimum weights which could not be loaded in cars furnished. Reparation awarded. *California Cotton Mills Co. v. Director General, as Agent*, 403.

CAR MILE EARNINGS. See EARNINGS.**CAR SHORTAGE.**

Practices of the Pennsylvania and the Pittsburgh & Lake Erie railroads during period of labor troubles and abnormal conditions following Federal control, in the distribution of coal cars to mines on the Monongahela and Morgantown & Wheeling railways, found not to have been unreasonable under the circumstances and conditions existing, and while discrimination did exist it was not such as to constitute undue prejudice in favor of mines on the Pennsylvania and Pittsburgh & Lake Erie. *Northern West Virginia Coal Operators' Asso. v. P. & L. E. R. R. Co.*, 167.

CARS OFF LINE.

Table showing by months for years 1920 and 1921 percentage of home cars on home lines. *Reduced Rates, 1922*, 676 (692).

CAR SPOTTING. See SPOTTING CARS.

CHARACTERISTICS OF COMMODITY.

While some forms of hollow building tile are more susceptible to damage than is brick, the additional risk does not appear to be sufficient to warrant a difference in rates, particularly when it is considered that the average value of hollow building tile falls well within the range of values of brick. Hollow building tile is made from the same raw materials as brick, is used largely for the same purposes, and the various transportation elements are substantially the same. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (220).

CHAUTAUQUA.

Rules and regulations providing for the free transportation of one special baggage car containing paraphernalia, if the persons traveling on the same train with it number 25 or more, and applicable to Chautauqua outfits moving from Chicago, Ill., to the Pacific coast and return, found not unreasonable or unduly prejudicial. Complainants' inability to avail themselves of the rule is due to the complete change of program at each point daily, while theatrical companies which take advantage of the rule have a weekly change and move their personnel en masse. *Ellison-White Chautauqua System v. Director General, as Agent*, 492.

CHICAGO-NEW YORK RATES.

The Chicago-New York rate on which articles in the uniform brick list from points west of the Pittsburgh group are based has by reason of successive general increases become too high to permit the free movement of this desirable heavy-loading traffic between central and trunk-line territories, a situation which detracts from, rather than adds to, the revenues of the carriers. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.* 213 (245-246).

Under the general readjustment of rates herein prescribed on articles in the uniform brick list, rates between Chicago, Ill., and New York, N. Y., and from percentage groups west of the Pittsburgh group to New York found unreasonable. Reasonable maximum base rate and percentages thereof prescribed. *Id.* (246).

CHICAGO SWITCHING DISTRICT.

Proposal to amend the so-called Lowrey tariff, by excepting therefrom shipments of sand and gravel moving from points on respondent's line outside the Chicago switching district, found justified. *Sand and Gravel from Wokcottville*, 92.

CITY LIMITS.

Refusal of American Ry. Express Co. to extend its free collection and delivery service in Springfield, Mass., so as to include that section known as East Springfield, while affording such service to the so-called Park and Franconia sections, found not unjustly discriminatory. Traffic is not "like" within the meaning of that word as used in section 2 of the act; and the free collection and delivery service is not performed "under substantially similar circumstances and conditions." *East Springfield Citizens' Club v. American Ry. Exp. Co.*, 482.

CLASS AND COMMODITY RATES. See also CLASS RATES; COMMODITY RATES.

Class rates on cotton yarns from New Bedford Wharf, Mass., to Pier 40, North River, New York, N. Y., by water, during Federal control, found unreasonable and unduly prejudicial to extent it exceeded lower commodity rate contemporaneously maintained on cotton piece goods which lower rate was subsequently made applicable to cotton yarns. Reparation awarded. *New Bedford Board of Commerce v. Director General, as Agent*, 85.

CLASS AND COMMODITY RATES—Continued.

Upon complaint that the class and commodity rates from Memphis, Tenn., to Birmingham, Ala., are unreasonable and unduly prejudicial as compared with corresponding rates from Memphis to Nashville and Chattanooga, Tenn., and Atlanta, Ga. *Held*: Commodity rates were not and are not unreasonable, but class rates are and for the future will be unreasonable and unduly prejudicial to extent they exceed the contemporaneous rates in the reverse direction. *Birmingham Traffic Bureau v. St. L.-S. F. Ry. Co.*, 108.

Combination class rate on sporadic shipments of fish oil moving from Port St. Joe, Fla., to Ivorydale, Ohio, each component of which was increased under *Increased Rates, 1920*, 58 I. C. C., 220, found unreasonable to extent it exceeded lower joint commodity rate, theoretically constructed by adding such increase but once to a lower combination, subsequently established. Reparation awarded. *Procter & Gamble Co. v. A. N. R. R. Co.*, 121.

Fifth-class rate on iron-foundry flasks from Chicago Heights, Ill., to Oakland, Calif., found unreasonable to extent it exceeded lower commodity rate on rough iron and steel castings and ingot molds and other iron and steel articles of equal or higher grade than foundry flasks. Reasonable rate prescribed and reparation awarded. *American Manganese Steel Co. v. Director General, as Agent*, 149.

Transcontinental class A rate applicable on "Machinery and machines—Engines, steam or internal combustion, n. o. l. b. n." and assessed on steam turbines moving from Schenectady, N. Y., and Trenton, N. J., to Portland, Oreg., and Seattle, Wash., found illegal. Shipments found entitled to lower combination commodity rate applicable under tariff description of "Machinery and machines, * * * Turbines and parts thereof," which item was not limited to exclude steam turbines. *Northwest Steel Co. v. Director General, as Agent*, 195.

Domestic class rate on imported pyrethrum flowers, from Seattle and Tacoma, Wash., to Baltimore, Md., assessed as a result of the cancellation of all import rates by the director general under General Order No. 28, found unreasonable as compared with import commodity rates on various commodities from and to the same points, and to extent it exceeded import commodity rate subsequently established. Reparation awarded. *Gilpin, Langdon & Co. (Inc.) v. Director General, as Agent*, 292.

Class D rate on sporadic shipment of scrap iron from Burmah, Idaho, to Seattle, Wash., found not unreasonable as compared with lower commodity rates on various other commodities from and to the same points, or with commodity rates on junk from Gooding, Jerome and Milner, Idaho, from which points there is a substantial movement. *Kohan & Falk Co. v. O. S. L. R. R. Co.*, 313.

Fifth-class rate on beer from Duluth, Minn., to East Dubuque and Fulton, Ill., found not unreasonable as compared with lower commodity rate from Chicago, Ill., to Duluth, in the opposite direction, or as compared with commodity rate subsequently established in both directions. The volume of movement northbound from Chicago has been greatly in excess of the southbound movement from Duluth, and the class rates from Chicago to Duluth reflect the competition of several rail lines and also water competition. *Duluth Brewing & Malting Co. v. N. P. Ry. Co.*, 315.

CLASS AND COMMODITY RATES—Continued.

Rate on scrap iron from Silvis to Moline, Ill., during Federal control, increased under the minimum class scale prescribed under General Order No. 28 of the director general, found unreasonable to extent it exceeded lower commodity rate subsequently established, which rate compares favorably with similar and lower rates between other points in the immediate vicinity of Silvis. Reparation awarded. *Standard Rail & Steel Co. v. C., R. I. & P. Ry. Co.*, 317.

Class rate on gravel from Hattiesburg, Miss., to Beaumont, Tex., found unreasonable to extent it exceeded the aggregate of intermediate rates to and from New Orleans, La., on which basis a joint commodity rate was maintained from Hattiesburg through Beaumont to Port Arthur, Tex., and which was subsequently established to Beaumont. Reparation awarded. *Magnolia Petroleum Co. v. Director General, as Agent*, 321.

Joint sixth-class rate which included marine insurance applicable on alum moving rail-water-and-rail from Chattanooga, Tenn., to Lodi, N. J., found unreasonable to extent it exceeded lower commodity rate plus marine insurance charges, subsequently established. Reparation awarded. *Kalbfleisch Corp. v. C. of G. Ry. Co.*, 333.

Commodity rates take preference over class rates and specific commodity rates take preference over general commodity rates. *U. S. Industrial Alcohol Co. v. Director General*, 389 (392).

Class rates on petroleum lubricating oil and grease from Newark, N. J., to Charlotte, N. C., and Atlanta, Ga., found unreasonable and unduly prejudicial to extent they exceeded lower commodity rates applicable from Jersey City, N. J., and other New York rate points. Lower rates, published subject to rule 77 of Tariff Circular 18-A, was subsequently established from Newark, a point directly intermediate between Jersey City and points of destination. Reparation awarded. *New York & New Jersey Lubricant Co. v. Director General, as Agent*, 477.

Class rates on linseed oil found unreasonable to extent they exceeded commodity rates on cottonseed oil. Measure of reasonable maximum rates prescribed and reparation awarded. *Midland Linseed Products Co. v. Director General, as Agent*, 522.

Class rates on filtering clay, ground and baked, from Ardmore, S. Dak., to Omaha, Nebr., and Kansas City, Mo., found not unreasonable as compared with lower class rates on numerous other clay products or with lower commodity rates subsequently established. *Refinite Co. v. Director General, as Agent*, 545.

Class rate on rock or shale dust from West Frankfort, Ill., to Christopher and Sesser, Ill., during Federal control, found unreasonable as compared with lower commodity rates on crushed stone and other low-grade commodities in the same territory. Reparation awarded to basis of commodity rate subsequently established. *Old Ben Coal Corp. v. Director General, as Agent*, 584.

Proposed cancellation of l. c. l. commodity rates and application of higher class rates in lieu thereof on burlap and gunny bags from St. Louis, Mo., East St. Louis, Ill., and upper Mississippi River crossings to destinations in central territory, found justified. *Burlap and Gunny Bags from St. Louis*, 587.

CLASS AND COMMODITY RATES—Continued.

Applicable class A rates on pulp and paper making machinery from defined territory east of the Missouri River to Camas, Wash., and West Linn, Oreg., found not unlawful because in excess of commodity rates on electrical, ironworking (power), mining, smelting, and sugar-making machinery, contemporaneously applicable from the same originating territory to western destinations. *Crown Willamette Paper Co. v. Director General, as Agent*, 631.

CLASSIFICATION.**In General:**

In the absence of specific ratings or rates on an article shipped it becomes necessary for the commission to determine whether or not the charges collected were reasonable. *Refinite Co. v. Director General, as Agent*, 545 (546).

While there are exceptions, articles in inner containers are generally rated higher than when shipped in bulk, inasmuch as the better grades are usually shipped in inner containers, and the value of articles so shipped, as a rule, is higher per unit than when shipped in bulk. *Traffic Bureau of Nashville v. L. & N. R. R. Co.*, 623 (626).

A particular element, if considered alone, might appear to warrant a higher or lower rating on an article than would be justified if all proper elements are taken into consideration. *Id.* (626).

Value is only one of the elements to be taken into consideration in fixing a rating or rate. *Nat'l Asso. Waste Material Dealers v. A. A. R. R. Co.*, 748 (751).

Peanuts, salted: Second-class l. c. l. rating in southern classification on, in fiber or metal cans or cartons, in barrels or boxes, in metal cans in crates, and in pails, found not unreasonable. Rating compares favorably with ratings on the same commodity in official and western classifications, is the same as suggested in *Consolidated Classification case*, 54 I. C. C., 1, and the analogy between salted peanut and other lower-rated articles with which compared is not so close as to warrant the conclusion that the rating is unreasonably high. *Traffic Bureau of Nashville v. L. & N. R. R. Co.*, 623.

Rubber, scrap: Fifth-class rating and rates governed by official classification on reclaimed rubber and applied to the transportation of scrap rubber, including tires, having value only for reclamation of raw materials, found unreasonable to extent they exceed sixth class. Reclaimed rubber is a more valuable commodity than scrap rubber, of which it is a product, and other scrap materials with which scrap rubber does not compare unfavorably, either in value or from a transportation standpoint, are rated sixth class. *Nat'l Asso. Waste Material Dealers v. A. A. R. R. Co.*, 748.

Sheets and bags, cotton picking: Any quantity rating on, in southern classification, found not unreasonable or unduly prejudicial as compared with ratings on burlap cloth and burlap bags. *Traffic Bureau of Nashville v. L. & N. R. R. Co.*, 623.

Tents: Third-class rating on, new and second-hand, found not unreasonable or otherwise unlawful as compared with rates on Chautauqua outfits, the movement of which is special and not comparable with that of used tents. It would be difficult, without affording an easy and convenient means for misbidding and discrimination, to establish ratings on damaged, used, or second-hand articles different from those on like articles new. *Carnie-Goudie Mfg. Co. v. A., T. & S. F. Ry. Co.*, 40.

CLASSIFICATION—Continued.

Tire carriers, automobile: Following *Buick Motor Co.*, 60 I. C. C., 669, automobile tire carriers found not to be automobile parts, and fourth-class rating applicable on hardware, n. o. s., found applicable and not unreasonable. *Chevrolet Motor Co. of Michigan v. Director General*, as Agent, 281.

Vaseline: Third-class rating on medicines, n. o. i. b. n., collected on vaseline found legally applicable and not unreasonable. *Chesebrough Mfg. Co. v. Director General*, as Agent, 555.

Woodwork and running boards, automobile: Fifth-class rating on auto-body woodwork, k. d., and on untrimmed floor, toe, and running boards, in the white, between certain points in official territory, found not unreasonable as compared with sixth-class rating on lumber and products in the same territory or in the West and Southwest wherein lumber and products move generally at commodity rates. *Chevrolet Motor Co. v. Director General*, as Agent, 279.

CLASSIFICATION TERRITORIES.

Second-class l. c. l. rating in southern classification on salted peanuts in fiber or metal cans or cartons, in barrels or boxes, in metal cans in crates, and in pails, found not unreasonable. Rating compares favorably with ratings on the same commodity in official and western classifications and is the same as suggested in *Consolidated Classification case*, 54 I. C. C., 1. *Traffic Bureau of Nashville v. L. & N. R. R. Co.*, 623.

CLASS RATES. See also CLASS AND COMMODITY RATES.

Proposed by the American Ry. Express Co., for application between points in the United States and points in Canada, found justified in so far as the divisions accruing for that part of the transportation between points in the United States and the international boundary are not in excess of rates prescribed or permitted by the commission for local hauls. Such readjustment results in some reductions, and in no instance do the rates proposed equal the aggregate of intermediates. *Express Class Rates Between United States and Canada*, 20.

From Memphis, Tenn., to Birmingham, Ala., found unreasonable and unduly prejudicial to extent that they exceed the contemporaneous rates in the reverse direction. Transportation conditions are substantially similar, and there should be no material disparity in rates. *Birmingham Traffic Bureau v. St. L.-S. F. Ry. Co.*, 108.

Fourth-class rates on automobile wooden floor, toe, and running boards, in mixed carloads, from Detroit, Mich., to Fort Worth, Tex., found unreasonable to extent that the rates on trimmed boards exceeded class A, and on untrimmed boards class B, prescribed in *Chevrolet Motor Co.*, 62 I. C. C., 175. Reparation awarded. *Chevrolet Motor Co. of Texas v. Director General*, as Agent, 325.

COLLECTION OF CHARGES.

Transit charges should be published as a joint charge, either in the tariff naming the joint through rates or in a joint transit tariff specifically referred to in the tariff naming the joint through rates, and should be collected by the carrier that can do so with the greater efficiency and convenience, and divided in proportion to the expenses incurred by each line. *Illinois Central R. R. Co. v. N. O. G. N. R. R. Co.*, 505.

COMBINATION RATES. See also LOCAL RATES.

Applicable on waste paper from New York, Brooklyn, and Long Island City, N. Y., to Bogota, N. J., found unreasonable due to the factor beyond Little Ferry, N. J. Reparation awarded and reasonable maximum rates prescribed. *Continental paper Co. v. Director General, as Agent*, 162.

On bituminous coal from West Clinton Ind., moving via Chicago, Ill., to Ottumwa, Iowa, and reconsigned to various destinations in Iowa and Nebraska, found not unreasonable or unduly prejudicial as compared with lower combination rates via Peoria, Ill., over which route the services of an intermediate carrier not specified in routing instructions would have been required. *National Supply Co. v. C., B. & Q. R. R. Co.*, 285.

COMMERCIAL AND ECONOMIC CONDITIONS.

While minima should be high enough to insure a proper utilization of equipment, they should not exceed what can be reasonably and generally loaded. In fixing reasonable minima some leeway should be accorded for commercial conditions and the minima should not require the loading of all cars to their utmost capacity. *Lumber Carload Minima*, 98 (106).

What will constitute a fair return under paragraph (3) of section 15a of the act is distinct from that of initiating and adjusting rates under paragraph (2) of that section. Section 15a contemplates the determination of a return which the carriers may attain over a period of time under rates adjusted from time to time with that object in view. The phrase "from time to time" does not mean that the commission should adjust and readjust rates to meet business fluctuations. Whether carriers may be able to earn an aggregate net railway operating income equal to a fair return must depend to a large extent upon business conditions. *Reduced Rates, 1922*, 676 (680).

Rate stability is one of the important needs of commerce. It is a fundamental law of business that the anticipation of a falling market tends to restrict purchases. *Id.* (705, 733).

A general reduction in the rate level, as substantial as the condition of the carriers will permit, will tend not only to lessen the transportation burden but also to equalize and stabilize the conditions under which commerce and industry are carried on, with consequent fuller assurance to the carriers of realizing the fair return contemplated by the law. *Id.* (734).

COMMODITY RATES. See also CLASS AND COMMODITY RATES.

Brick is essentially traffic which moves at commodity rates, and commodity rates should be established where a movement is indicated. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (252).

COMMON CARRIER PURPOSES.

Fact that a carrier is a common carrier corporation subject to the act generally does not operate as a bar to its engaging in lawful business activities other than common carriage, and charges in connection with such activities are not a proper subject of tariff publication. *Certain-Teed Products Corp. v. C., R. I. & P. Ry. Co.*, 260 (262).

COMMON CARRIERS.

Delaware River & Union R. R. Co. found not to be a common carrier subject to the act, but under the test laid down in the *Tap Line cases*, 234 U. S., 1, 24, found to be a plant facility. *Sun Co. v. Director General, as Agent*, 11 (14).

COMMON CARRIERS—Continued.

It is the right of the public to use a road's facilities and to demand service of it rather than the extent of its business which is the real criterion determinative of its character. *Id.* (14).

Fact that a carrier is a common carrier corporation subject to the act generally does not operate as a bar to its engaging in lawful business activities other than common carriage, and charges in connection with such activities are not a proper subject of tariff publication. *Certain-Teed Products Corp. v. C., R. I. & P. Ry. Co.*, 260 (262).

Wyandotte Terminal R. R. Co. found to be a common carrier subject to the act. *Wyandotte Terminal R. R. Co.*, 346.

Brimstone R. R. & Canal Co. found to be a common carrier subject to the act. Divisions Received by Brimstone R. R. & Canal Co., 375 (386).

It is the right of the public to demand and use a railroad, rather than the extent of the tonnage it carries, that is the real criterion of whether it is a common carrier. *Id.* (386).

As a prerequisite to receiving divisions a railroad must be a common carrier. *Id.* (386).

Peoria & Pekin Union Ry. Co. found to be an independent common carrier subject to the act and as such is entitled to just and reasonable compensation for the services which it renders. *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, 412 (417).

COMMUNITY OF INTEREST. See **INTERCORPORATE RELATIONSHIPS.**

COMPARATIVE RATES.

In General: The impossibility of determining the exact relationship which the rates on any specific commodity bear to all freight is obvious. Even if exact statistics were available so that the relationship of "all freight" and a specific commodity could be definitely determined, it would be necessary to take into consideration the fact that all freight is a grand mixture of commodities, including products of agriculture, animals, mines, forests, manufacturers, and miscellaneous commodities. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (230).

Aluminum, scrap: Rates on, in straight carloads, or when mixed with other scrap metals, including scrap brass, copper, and tin, found unreasonable to extent they exceeded the rates applicable on straight or mixed carloads of scrap copper, brass, and tin. Measure of reasonable maximum rates prescribed. *Loewenthal Co. v. C. & N. W. Ry. Co.*, 115.

Billets, forged, steel: Rates on, found not unreasonable as compared with lower rate on rough rolled billets. *Republic of France v. E. R. R. Co.*, 270.

Bolts, excelsior: Rates applicable on, found unreasonable to extent they exceeded rates on logs and cordwood. Waiver of undercharges authorized. *Phillips Excelsior Co. v. Director General, as Agent*, 165.

Caps, blasting: Double first-class rate on blasting caps and electric blasting caps found not unreasonable as compared with first-class rate on dynamite and other high explosives. *Aetna Explosives Co. v. W. S. R. R. Co.*, 264.

Clay, filtering: Class rates on, found not unreasonable as compared with lower class rates on numerous other clay products. *Refinite Co. v. Director General, as Agent*, 545.

COMPARATIVE RATES—Continued.

Dust, shale or rock: Class rate on, found unreasonable as compared with lower commodity rates on crushed stone and other low-grade commodities. Reparation awarded to basis of commodity rate subsequently established. *Old Ben Coal Corp. v. Director General, as Agent*, 584.

Flasks, iron-foundry: Rate on, exceeded lower rate on rough iron and steel castings and ingot molds and other iron and steel articles of equal or higher grade than foundry flasks. Reasonable rate prescribed and reparation awarded. *American Manganese Steel Co. v. Director General, as Agent*, 149.

Flowers, pyrethrum: Domestic class rate on imported pyrethrum flowers, from Seattle and Tacoma, Wash., to Baltimore, Md., assessed as a result of the cancellation of all import rates by the director general under General Order No. 28, found unreasonable as compared with import commodity rates on various commodities from and to the same points, and to extent it exceeded import commodity rate subsequently established. Reparation awarded. *Gilpin, Langdon & Co. (Inc.) v. Director General, as Agent*, 292.

Furnaces: Rate on "furnaces, air or steam" assessed on shipments of cast-iron furnaces with sheet-metal casings and caps, k. d. and crated, found not unreasonable as compared with lower rate on "cast-iron furnaces, k. d." which lower rate was subsequently established on cast-iron furnaces with sheet-iron or steel casings. *Monitor Stove Co. v. Director General, as Agent*, 305.

Iron, scrap: Rate on, found not unreasonable as compared with rates on canned goods, cement, agricultural implements, and bags and bagging. *Kohan & Falk Co. v. O. S. L. R. R. Co.*, 313.

Limestone, broken: Rate on, found unreasonable to extent it exceeded rate on ground limestone, a more valuable and higher grade commodity. Reparation awarded. *West Virginia Pulp & Paper Co. v. Director General, as Agent*, 534.

Live stock: Director general canceled the "per car" rates on, and established rates in cents per 100 pounds. After termination of Federal control carriers restored the "per car" basis. *Held:* While transportation characteristics of live stock are different from those on lumber and grain, the earnings per car and per car mile on the latter were substantially higher than those on live stock, which comparison tends to show that the charges assessed during the interim were not unreasonably high. *Carstens Packing Co. v. Director General, as Agent*, 125.

Machinery, pulp and paper making: Rates on, found not unlawful because in excess of rates on electrical, ironworking (power), mining, smelting, and sugar-making machinery. *Crown Willamette Paper Co. v. Director General, as Agent*, 631.

Oil, coconut: Upon further hearing, findings in original report 58 I. C. C., 108, that rates on, in tank car loads were unreasonable to extent that they exceeded the contemporaneous rates on cottonseed oil, affirmed. *Procter & Gamble Co. v. C., N. O. & T. P. Ry. Co.*, 878.

Oil, copra, and palm-kernel: Upon further hearing, previous report, 55 I. C. C., 154, modified and rates on cottonseed products found not to have been reasonable maximum rates on copra and palm-kernel oil. Reparation awarded to basis of maximum rates found to have been reasonable when shipments moved. *Southport Mill (Ltd.) v. Director General*, 852.

COMPARATIVE RATES—Continued.

Oil, linseed: Class rates on, found unreasonable to extent they exceeded commodity rates on cottonseed oil. Measure of reasonable maximum rates prescribed and reparation awarded. *Midland Linseed Products Co. v. Director General, as Agent*, 522.

Pebbles and brick, flint: Rates on imported flint pebbles and flint brick found not unreasonable as compared with lower rates on pulverized flint, glass and molding sand, and other commodities. *Rock Products Traffic League v. B. & O. R. R. Co.*, 146 (148).

Plates, steel, new: Fifth-class rate on, found unreasonable to extent it exceeded rate on chain, cable, wire, steel bars, angles, tin plate, and roofing and sheet iron. Reparation awarded. *Republic of France v. Director General, as Agent*, 424.

Rails, steel, new: Combination rate on, found unreasonable to extent it exceeded lower joint rate on old rails which lower rate was subsequently made applicable to both new and old rails. Reparation awarded. *Republic of France v. Director General, as Agent*, 424.

Rock, dry phosphate: Minimum charge of \$15 per car established by the director general and assessed on, found not unreasonable as compared with rates on other low-grade commodities. *Royster Guano Co. v. Director General, as Agent*, 552.

Tents: Third-class rating on, new and secondhand, found not unreasonable or otherwise unlawful as compared with rates on Chautauqua outfits, the movement of which is special and not comparable with that of used tents. It would be difficult, without affording an easy and convenient means for misbilling and discrimination, to establish ratings on damaged, used, or secondhand articles different from those on like articles new. *Carnie-Goudie Mfg. Co. v. A., T. & S. F. Ry. Co.*, 40.

Woodwork and running boards, automobile: Rates on auto-body woodwork, k. d., and on untrimmed floor, toe, and running boards, in the white, found not unreasonable as compared with rates on lumber and products. *Chevrolet Motor Co. v. Director General, as Agent*, 279.

Wormseed, ground: Rates on, in bags and barrels, l. c. l., found unreasonable to extent they exceeded third-class ratings and rates on other kinds of seed, in less than carloads. Reasonable maximum rates prescribed and reparation awarded. *Standard Chemical Mfg. Co. v. Director General, as Agent*, 467.

Yarns, cotton: Class rate on, found unreasonable and unduly prejudicial to extent it exceeded lower commodity rate contemporaneously maintained on cotton piece goods which lower rate was subsequently made applicable to cotton yarns. Reparation awarded. *New Bedford Board of Commerce v. Director General, as Agent*, 85.

COMPETITION.

In General: Carriers may properly make rates to meet competitive conditions, so long as such rates are reasonably compensatory and do not give rise to undue prejudice or preference. *Grain Rates from Minnesota and Wisconsin*, 665 (672).

Articles:

While seconds and culls of the higher grade of brick compete with common brick, they are not necessarily to be regarded as such strictly competitive articles of the same class as to entitle them to the same rate. They can and should bear a greater share of the transportation burden than does ordinary common brick. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (221).

COMPETITION—Continued.**Articles—Continued.**

Brick being a low-grade product which enters into competition largely with concrete, there is a rate level beyond which brick will not freely move, and that factor, although difficult of exact determination, should be given due weight in considering the effect on the carriers' revenues of increases or reductions in rates. *Id.* (238).

Carrier: Proposed reduced rates on bituminous coal from points on the C. & O. Ry. in eastern Kentucky and West Virginia to St. Louis, Mo., to meet the rate applicable via the L. & N. from its contiguous mines in eastern Kentucky to the same destination, and consequent proposed reduced rates from districts in northern Tennessee, eastern Kentucky, and southwestern Virginia on the L. & N. to points west of Louisville, Ky., on the St. Louis division of the Southern Ry. in Indiana and Illinois, and to St. Louis, which will align them with those proposed by the C. & O., found justified. Coal from Kentucky, Tennessee, and West Virginia, 29.

COMPLAINT.

The commission must look to the substance of a complaint rather than to its form. One of the essential elements of a complaint is allegation of a violation of a law which the commission has jurisdiction to administer. *Wasatch Coal Co. v. Director General, as Agent*, 118 (120).

COMPONENT. See **FACTOR**; **PROPORTIONAL RATES**.

COMPRESSION IN TRANSIT. See **TRANSIT ARRANGEMENTS**.

CONCENTRATION IN TRANSIT. See **TRANSIT ARRANGEMENTS**.

CONCURRENCE.

Missouri Pacific tariff, concurred in by Missouri & North Arkansas R. R., provided for the application from transit point of the balance of the joint through rate from original point of shipment to final destination when shipments move outbound from transit point *over this line*. *Held*: Phrase "over this line" has reference to rails of Missouri Pacific and on shipments which moved into transit point via the Missouri & North Arkansas and outbound over the Missouri Pacific the transit rates were applicable. Shipments found overcharged and reparation awarded. *Lee Pendergrass Cotton Co. v. Director General, as Agent*, 637 (641).

CONFERENCE RULINGS.

Conference Rulings 190 and 214 (c) cited and followed. *Schuhle's Pure Grape Juice Co. v. Director General, as Agent*, 485 (486).

CONFLICT OF JURISDICTION.

Proposed reduced rates on coal from mines in Wyoming to points in Utah for the purpose of restoring a previously existing equality in rates from such Wyoming mines and the Castle Gate district of Utah, found not justified. If reductions permitted, the Utah State commission or the carriers might reduce the rates from the Utah mines, practically fixing a differential as warrant for their action, resulting in that destructive competition so out of consonance with the fundamentals of the act, and entailing a conflict of authority with the State commission, which would have no place in modern rate regulation. *Coal from Wyoming Mines*, 254.

CONNECTING LINES.

In the absence of unjust discrimination or undue prejudice a carrier can not be compelled to absorb the switching charges of a connecting line. *Hunt, Helm, Ferris & Co. v. C. & N. W. Ry. Co.*, 283 (284).

CONSTITUTIONALITY.

Contention that section 206 (f) of the transportation act, 1920, providing that the period of Federal control is not to be computed as a part of the periods of limitation in claims for reparation, is unconstitutional, not sustained, and excluding such period, claim as to shipments here involved found not barred. *Kalbfleisch Corp. v. C. of G. Ry. Co.*, 333 (334). The provisions of section 15a of the act have been framed in recognition of constitutional guaranties of fair return upon property devoted to public use. *Reduced Rates*, 1922, 676 (680).

CONSTRUCTION OF STATUTE.

Section 6 of the act is intended to apply only to services, facilities, and privileges granted in connection with the actual handling or movement of freight or the transportation of, and the rendering of specified services to, passengers. *Certain Teed Products Corp. v. C., R. I. & P. Ry. Co.*, 260 (262).

The act provides for prevention as well as for cure. Undue prejudice and preference may be brought about as readily by reducing one as by increasing the other of two related rates. *Sublimed Lead to Trunk Line Points*, 343 (345).

One purpose of the act is to prevent rebates effected by means of exorbitant divisions which find their way to proprietary companies through common carrier short lines. *Divisions Received by Brimstone R. R. & Canal Co.*, 375 (386-387).

Neither the first nor the second Cummins amendment invalidated rates based on actual differences in value. The plain and unmistakable purpose of both amendments was to make unlawful and void, except as otherwise provided therein, all attempted limitations of liability for loss, damage, or injury to property transported, without respect to the manner or form in which they are sought to be made. *U. S. Industrial Alcohol Co. v. Director General*, 389 (391).

A mere accident of transportation whereby a shipment was carried through destination to the next farther distant point and then hauled back to its destination does not have the effect of making such farther distant point an intermediate point within the meaning of the fourth section of the act. *Humble Pipe Line Co. v. Director General, as Agent*, 651 (652).

Words "as nearly as may be" and "from time to time," as used in section 15a of the act, construed. *Reduced Rates*, 1922, 676 (680).

What will constitute a fair return under paragraph (3) of section 15a of the act is distinct from that of initiating and adjusting rates under paragraph (2) of that section. Section 15a contemplates the determination of a return which the carriers may attain over a period of time under rates adjusted from time to time with that object in view. The phrase "from time to time" does not mean that the commission should adjust and readjust rates to meet business fluctuations. Whether carriers may be able to earn an aggregate net railway operating income equal to a fair return must depend to a large extent upon business conditions. *Id.* (680).

It is necessary to determine and make public, as required by section 15a of the act, a percentage of fair return. Determination of the percentage implies, or carries with it, no guaranty. Read in connection with the provision for recapture of one-half of the excess above 6 per cent it is, instead, a limitation. *Id.* (681).

CONSTRUCTION OF STATUTE—Continued.

The intent of Congress under section 15a of the act was to create a steady and reliable flow of money "for enlarging such facilities in order to provide the people of the United States with adequate transportation." A substantial reduction in the percentage of return might be unsettling in its effect, particularly in light of the fact that the return allowed in 1920 was not realized. The fact that a utility may reach financial success only in time or not at all is a reason for allowing a liberal return on the money invested in the enterprise. *Id.* (682).

That Congress by direct legislation fixed the fair return for the period of two years beginning March 1, 1920, at the rate of 5½ per cent, to which, in the commission's discretion, it might add not exceeding one-half of 1 per cent, is a matter which may fairly be considered in the determination of the rate for the period immediately ensuing. But, taken in connection with the other provisions of section 15a of the act, it does not constrain the commission to consider 5½ per cent as maximum in determining a fair return for the ensuing period. *Id.* (682-683).

CONTAINERS. See also PACKING.

While there are exceptions, articles in inner containers are generally rated higher than when shipped in bulk, inasmuch as the better grades are usually shipped in inner containers, and the value of articles so shipped, as a rule, is higher per unit than when shipped in bulk. *Traffic Bureau of Nashville v. L. & N. R. R. Co.*, 623 (626).

CONTRACT.

Collection of a trackage charge by the Chicago, Ottawa & Peoria Ry. Co. for the use of a portion of its track at Marseilles, Ill., operated as a private switch track, found not unlawful. The amount of consideration paid for the use of this track is a matter of private contract over which the commission has no jurisdiction. *Certain-Teed Products Corp. v. C., R. I. & P. Ry. Co.*, 260.

Carriers whose rails do not connect at interchange points may join in the establishment of through routes and joint rates and may employ a switching line to effect transfer of traffic between their rails. The extent to which each shall participate in compensating the switching line under such an arrangement is largely a matter of agreement between the employing carriers. In the absence of agreement to the contrary, it would not seem unfair that the expense should be shared equally. *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, 412 (417).

CONVENIENCE AND NECESSITY.

In view of the importance to the public of the transportation service rendered by the Missouri & North Arkansas R. R. Co., operation of which has been discontinued, such railroad found to be a public necessity in its entirety, and operation thereof should be resumed and continued. *Division of Joint Rates and Fares of M. & N. A. R. R. Co.*, 47 (52-53).

COST OF OPERATION.

The words "just and reasonable" imply the application of good judgment and fairness, of common sense and a sense of justice, to the facts of record and are not fixed unalterable mathematical terms. Moreover, as has been recognized by the Supreme Court, 206 U. S. 1, 26, there must exist range for "the flexible limit of judgment which belongs to the power to fix rates" and there could be no flexible limit of judgment if all rates were to be measured by their relation to cost or by a predetermined rule. *Reparation as Relating to Increase of Rates*, 5 (6).

Operating conditions prior to June 25, 1918, on which date rates were increased by the director general, including the retroactive application of the wage award of the Railroad Labor Board, were important factors, but they were not necessarily controlling in determining the reasonableness of rates after January 1 of that year. *Id.* (7).

CREDIT.

Carriers should not continue to provide for all needed capital by successive bond issues. Issuance of bonds in a disproportionate degree unduly increases fixed charges and tends to weaken the credit of the carriers. In such a process eventually a point must be reached where no new capital can be raised, except for short terms at high rates. *Reduced rates*, 1922, 676 (682).

CRIMINAL ACTS.

Where value stated in bills of lading is declared by shippers such declarations of value do not directly limit carriers' liability. If goods are lost or damaged in transit and shippers make claims based on values in excess of that declared, they are subject to prosecution under section 10 of the act. *U. S. Industrial Alcohol Co. v. Director General*, 389 (391-392.)

CUBICAL CAPACITY MINIMUM. See MINIMUM WEIGHT.**CUMMINS AMENDMENT.**

Commodity rates were prepaid on alcohol of an "actual value not exceeding \$2.50 per gallon." Subsequently on the ground that actual value exceeded \$2.50 charges were corrected to the basis of class rates applicable on alcohol without limitation as to value. *Held*: Limitations attached to commodity rates were unlawful and void under the Cummins amendment, but such commodity rates were lawful and applicable as to these shipments, as commodity rates take preference over class rates and specific commodity rates take preference over general commodity rates. Shipments found overcharged and refund directed. *U. S. Industrial Alcohol Co. v. Director General*, 389.

Provisions of the original Cummins amendment as subsequently amended on August 9, 1916, discussed. *Id.* (390-391).

Neither the first nor the second Cummins amendment invalidated rates based on actual differences in value. The plain and unmistakable purpose of both amendments was to make unlawful and void, except as otherwise provided therein, all attempted limitations of liability for loss, damage, or injury to property transported, without respect to the manner or form in which they are sought to be made. *Id.* (391).

What the second Cummins amendment declares to be unlawful it also declares to be void. It does not declare any rate to be void. A void rate would be without legal effect and could not be legally applicable. *Id.* (392).

CUMMINS AMENDMENT—Continued.

Following *U. S. Industrial Alcohol Co.*, 68 I. C. C., 389, shipments of soap found to have been overcharged. Rates were made dependent upon declarations of value made by shippers but not authorized by the commission under the second Cummins amendment, and while void, when stripped of the void limitation, were valid and applicable. Reparation awarded. *Swift & Co. v. Director General, as Agent*, 537.

DAMAGED GOODS.

Third-class rating on tents, new and secondhand, found not unreasonable or otherwise unlawful as compared with rates on Chautauqua outfits, the movement of which is special and not comparable with that of used tents. It would be difficult, without affording an easy and convenient means for misbilling and discrimination, to establish ratings on damaged, used, or secondhand articles different from those on like articles new. *Carnie-Goudie Mfg. Co. v. A., T. & S. F. Ry. Co.*, 40.

DAMAGES.

The commission would not be warranted in announcing any general rule for determining the reasonableness of rates exacted on shipments moving before or after June 25, 1918, on which date rates were increased by the director general, or any other date. In proceedings against the director general, as in all others, the commission must adhere to the sound and salutary principle that whether and to what extent a rate was or is unjust or unreasonable in a particular case is a question of fact, to be determined by the exercise of good judgment, informed by experience, in the light of all the pertinent facts of record. *Reparation as Relating to Increase of Rates*, 5.

Reparation awarded against defendant carriers which engaged in the transportation within the United States for the exaction of an unreasonable rate on shipments moving from points in Canada to points in the United States. *Bloedel-Donovan Lumber Co. v. Director General, as Agent*, 95 (97).

Contention that if reparation be awarded it should not be allowed on shipments moving more than two years prior to the filing of the complaint; that the limitation provision of the act not only barred the remedy on such shipments, but terminated the liability; and that the liability, having been terminated, could not be revived by section 206 (f) of the transportation act, 1920, which eliminates the period of Federal control from the periods of limitation, not sustained. *Cocke Live Stock Co. v. B., S. L. & W. Ry. Co.*, 130 (133).

Where complaint filed by a partnership and since shipments moved such partnership dissolved, one partner acquiring the interest of the other, lawful successor in interest is party entitled to reparation. *Wagner & Steiner v. Director General, as Agent*, 138 (140).

Complaint filed by a public traffic manager named himself as complainant. Shipments made, and charges were paid, by another party. No one having knowledge of the facts as to payment of transportation charges appeared at the hearing. *Held*: Reparation denied for lack of proof. *Carney v. Director General, as Agent*, 199 (200).

Fact that shipper included the freight charges in part in the selling price of the commodity shipped does not preclude it from recovering damages suffered by reason of having ultimately paid an unreasonable freight rate, nor is the right to recovery affected by the further fact that the Government happened to be both the purchaser and the carrier of the shipments in question. *Central Wisconsin Supply Co. v. Director General, as Agent*, 409 (411).

DAMAGES—Continued.

Except under unusual conditions the commission has uniformly awarded reparation on shipments moving from intermediate points under rates that were higher than from a more distant point, where the rate from the later point was established subject to rule 77 of Tariff Circular 18-A. *New York & New Jersey Lubricant Co. v. Director General, as Agent*, 477 (478).

Following *Seaboard Air Line Ry. v. U. S.*, decided June 6, 1921, the transfer of a claim for reparation from a copartnership to a corporation, found not within the inhibition of section 3477 of the United States Revised Statutes, forbidding assignments of claims against the United States. *Fairmont Creamery Co. v. Director General, as Agent*, 507 (515-516).

Upon supplemental report, unreasonable freight charges paid on nitrate of soda from Baltimore, Md., to Barksdale, Wis., found not borne by complainant, and reparation denied. Original report, 59 I. C. C., 570, modified. *Du Pont de Nemours & Co. v. Director General, as Agent*, 579.

DANGEROUS ARTICLES.

Double first-class rate on blasting caps and electric blasting caps found not unreasonable as compared with first-class rate on dynamite and other high explosives. *Aetna Explosives Co. v. W. S. R. R. Co.*, 264.

DECLARED VALUE. See CUMMINS AMENDMENT; RELEASED RATES.

DEFICIT.

Fact that a carrier has been operating at a deficit does not of itself prove that it is fairly entitled to increased divisions, and still less when it is coupled with the fact that the tonnage originating on its line has been far below normal. *Federal Valley R. R. Co. v. T. & O. C. Ry. Co.*, 499 (502).

DELAWARE RIVER & UNION RAILROAD COMPANY.

History and description of. *Sun Co. v. Director General, as Agent*, 11 (13).

Found not to be a common carrier subject to the act, but under the test laid down in the *Tap Line cases*, 234 U. S., 1, 24, found to be a plant facility. *Id.* (14).

DELIVERY. See also PICK UP AND DELIVERY SERVICE; SPOTTING CARS.

Proposal of the C., M. & St. P. Ry. Co. to eliminate the Green Fruit Auction Co. from list of industries on its rails at Chicago, Ill., and to apply switching charges on fruits destined thereto when the road haul has been performed by other carriers, found justified. Fact that switching charge will in some cases accrue against the traffic does not of itself constitute a ground for condemning the schedule; several routes will be available for delivery at the Chicago rates and the auction house will be substantially as well circumstanced, from the standpoint of free terminal delivery, as are other auction houses. *Green Fruit Auction Co.'s Elimination from Industries*, 89.

Demurrage charges assessed on a shipment held short of billed destination found illegal. Intermediate carrier failed to comply with delivery requirements as specified in bill of lading or to make inquiry of such delivering line for disposition orders. Furthermore, the obligation rested upon such carrier to complete its contract under the bill of lading and make tender of the shipment to the switching line for delivery specified. Reparation awarded. *Farrin Lumber Co. v. Director General, as Agent*, 127.

DELIVERY—Continued.

Combination rate on apples from Chelan, Wash., to Dallas, Tex., there stored in transit, and then forwarded to El Paso, Tex., found not unreasonable or unduly prejudicial. Lower group rate contemporaneously in effect, but such lower rate was restricted to delivery via certain lines over which shipments did not move. *El Paso Chamber of Commerce v. Director General*, as Agent, 135.

Contention that the Illinois Central's pier track No. 1 in Chicago, Ill., should be listed in Lowrey's tariff as an industry track, under which line-haul carriers would then absorb the switching charge of the Illinois Central, *Held*: Point of delivery is an l. c. l. freight station which was opened to complainant's shipments as affording the only practicable point of delivery. Record affords no basis for listing this pier track as an industry track and switching charge thereto found not unreasonable. *Great Lakes Dredge & Dock Co. v. Director General*, as Agent, 274 (276).

Charge in addition to line-haul rates assessed by the P. & R. Ry. for delivery by car float of shipments of explosives to vessels in Wilmington Harbor, Wilmington, Del., found illegal if applied to shipments for export delivered by float to vessels tied up at piers on the Delaware side of Delaware River within the limits of Wilmington Harbor, as described in the tariff. Applicable tariff provided for the imposition of such charge on shipments floated to vessels in mid-stream or at piers on the New Jersey shore opposite Wilmington. *Republic of France v. Director General*, as Agent, 419.

Tariff governing diversion or reconsignment to points within switching limits before placement permitted a single change in name of consignee at destination, or a single change in or a single addition to designation of place of delivery at destination, without charge, if the order be received prior to arrival of the car. Instructions relative to place of delivery of shipments here involved were not furnished until after arrival. *Held*: Reconsignment charges assessed found not unreasonable and a similar rule was not condemned in *Rockford Lumber & Fuel Co.*, 60 I. C. C., 217. *Alaska Junk Co. v. Director General*, as Agent, 615 (617).

DEMURRAGE.

Demurrage charges assessed on a shipment held short of billed destination found illegal. Intermediate carrier failed to comply with delivery requirements as specified in bill of lading or to make inquiry of such delivering line for disposition orders. Furthermore, the obligation rested upon such carrier to complete its contract under the bill of lading and make tender of the shipment to the switching line for delivery specified. Reparation awarded. *Farrin Lumber Co. v. Director General*, as Agent, 127.

Demurrage and storage charges assessed on shipments of wet nitro-cellulose and wet picric acid, for export, found to have been illegal. While it may have been the intention of carrier to limit the free time on such export shipments to either 48 or 24 hours and provide for storage thereafter, and to charge demurrage in accordance with its general demurrage tariffs, the tariffs failed to carry that intention into effect. Tariffs must be construed strictly according to their terms, and the intention of the framers is not controlling. Reparation awarded. *Republic of France v. Director General*, as Agent, 419.

DENSITY OF TRAFFIC. *See* **VOLUME OF TRAFFIC.**
DESCRIPTION.

Proposal to supplement tariff description of riprap, not defined in the present description, as affecting rates between points in Texas and between points in Texas and points in Louisiana and Arkansas, by defining such commodity as "Riprap (small and irregular shaped rock ranging in size up to 200 pounds weight)" found justified. Proposed change in description will effect no increase in rates. Riprap between Texas and Louisiana, 475.

DESIRABILITY OF TRAFFIC.

Scrap rubber is desirable traffic from a transportation standpoint. No special equipment or expedited service is required, loss and damage claims are negligible, and the movement is appreciable and fairly constant. Nat'l Asso. Waste Material Dealers *v.* A. A. R. R. Co., 748 (752).

DETENTION. *See* **DEMURRAGE.**

DIFFERENTIALS. *See also* **ARBITRARIES.**

Rate on packing-house products from Mason City, Iowa, to Duluth, Minn., found unduly prejudicial to extent it exceeds the rate from St. Paul, Minn., to the same destinations by more than 15 cents. Reparation denied. Decker & Sons *v.* Director General, as Agent, 34.

Rates on horses and mules from Texas points to Natchez, Miss., found unreasonable and unduly prejudicial to extent they exceeded by more than 6 cents per 100 pounds the rates prescribed in the *Shreveport case*, 48 I. C. C., 312, 351, for like distances from Texas points to Shreveport, La. Cocke Live Stock Co. *v.* B., S. L. & W. Ry. Co., 130.

Present interstate rates on articles in the uniform brick list, from Indiana-Illinois producing points, and from Canton, Ohio, and points grouped therewith or related thereto, to Chicago, Ill., and Milwaukee, Wis., and points taking the same rates, found unjust and unreasonable to extent they exceed rates constructed in accordance with the differentials over or under the Danville-Attica and Canton group rates, herein prescribed. National Paving Brick Mfrs. Asso. *v.* A. & V. Ry. Co., 213 (239-240).

Rates on furniture from North Carolina and Virginia points to Burlington, Iowa, found not unreasonable or unjustly discriminatory, but found unduly prejudicial to Burlington and unduly preferential of Des Moines, Iowa, and Missouri River cities to extent they exceed 15 cents less than the rates to Des Moines and 18.5 cents less than the rates to Omaha, Nebr., and other points taking Missouri River cities' rates. Reparation denied. Chittenden & Eastman Co. *v.* Director General, as Agent, 267.

Rates on gas oil found unreasonable and unduly prejudicial to extent they exceeded rates 5 cents less than on gasoline and other refined oils. Reasonable and nonprejudicial relationship prescribed and reparation awarded. Keokuk Electric Co. *v.* Director General, as Agent, 517.

Rates on talc from Hailesboro, Emeryville, and Talville, N. Y., to Lucaston, N. J., based on a differential over the rates to Philadelphia, Pa., and points taking the same rates, found not unreasonable, discriminatory, or unduly prejudicial. Lucas & Co. *v.* Director General, as Agent, 581.

DIRECTOR GENERAL. *See* **FEDERAL CONTROL.**

DISCRIMINATION. *See also* PREFERENCES AND PREJUDICES.

In original report, 60 I. C. C., 421, it was found that failure of carriers to increase their rates on intrastate traffic within Texas to correspond to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220, resulted in undue preference of persons and localities in intrastate commerce within that State; in undue prejudice to persons and localities in interstate commerce; and in unjust discrimination against interstate commerce. Upon further hearing order modified so as to exclude from its provisions the rates on refined sugar from Sugarland, Tex., to Texas common points. *Intrastate Rates within the State of Texas*, 25.

Intrastate rates on articles in the uniform brick list from Danville, Ill., to Chicago, Ill., to extent that they are lower than the interstate rates contemporaneously maintained from Danville, Ill., and Attica, Ind., to Chicago, found unduly prejudicial to Attica and shippers in interstate commerce from Danville and Attica, unduly preferential of intrastate shippers from Danville, and unjustly discriminatory against interstate commerce. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (241).

Refusal of American Ry. Express Co. to extend its free collection and delivery service in Springfield, Mass., so as to include that section known as East Springfield, while affording such service to the so-called Park and Franconia sections, found not unjustly discriminatory. Traffic is not "like" within the meaning of that word as used in section 2 of the act; and the free collection and delivery service is not performed "under substantially similar circumstances and conditions." *East Springfield Citizens' Club v. American Ry. Exp. Co.*, 482.

DISTANCE RATES.

Rates on horses and mules from Texas points to Natchez, Miss., found unreasonable and unduly prejudicial to extent they exceeded for distances of 750 miles or less the rates for like distances applicable under the distance scale prescribed from Texas points to Shreveport, La., in the Shreveport case, 48 I. C. C., 312, 351, and for distances greater than 750 miles to extent they exceeded rates prescribed in that case from the same points to Shreveport by more than 6 cents per 100 pounds. *Cocke Live Stock Co. v. B., S. L. & W. Ry. Co.*, 130.

Distance rates, state and interstate, on logs from stations on the N., C. & St. L. and Tennessee Central railroads to Nashville, Tenn., found not unreasonable or unduly prejudicial as compared with rates between other points on those lines. *Farris Hardwood Lumber Co. v. Director General, as Agent*, 181.

Short-haul interstate rates on articles in the uniform brick list, within central territory, including all points in Illinois, and within trunk-line territory, found unreasonable to extent they exceed the scales herein prescribed, the group and differential adjustment to govern where higher rates result from that adjustment. *National Paving Brick Mfra. Asso. v. A. & V. Ry. Co.*, 213 (247).

So-called net rates on hardwood logs, for manufacture and reshipment, from Proctor City, Wynnburg, Miston, and Lenox, Tenn., points on the Chicago, Memphis & Gulf, a branch line, to Bondurant, Ky., found not unreasonable or unduly prejudicial as compared with the distance scale of rates applicable from main line points. Rates on like traffic from Menglewood, Tenn., to Bondurant, Ky., and from Miston, Tenn., to Trimble, Tenn., found unreasonable. Reasonable maximum rate from Miston to Trimble on interstate traffic prescribed and reparation awarded. *Smith v. I. C. R. R. Co.*, 427.

DISTANCE RATES—Continued.

Rates on bituminous coal from Wheatland to Vincennes, Ind., and from Montgomery and Cannelburg to Loogootee, Ind., during Federal control, found unreasonable to extent they exceeded rates prescribed in *Clinton Paving Brick Co.*, 66 I. C. C., 338, for similar distances. Reparation awarded. *Loogootee Fire Clay Products Co. v. Director General*, as Agent, 443.

DISTRIBUTION OF CARS. See **CAR DISTRIBUTION.**

DISTRICT RATES. See **GROUP RATES.**

DISTURBANCE OF ADJUSTMENT.

Rates on sand from Grinter, Kans., to points within the switching district of Kansas City, Mo., were on a parity with rates from other Kaw River sand-producing points. Due to the general increases under General Order No. 28 of the director general and *Increased Rates, 1920*, 58 I. C. C., 220, relationship disrupted as to Grinter. *Held*: Rates from Grinter found unreasonable, as under a group arrangement that point should be included in the same group as such other Kaw River points. Reasonable rates prescribed and reparation awarded. *Stewart Sand Co. v. A., T. & S. F. Ry. Co.*, 111.

Spread between the rates on blackstrap molasses moving to Nashville, Tenn., and Birmingham, Ala., can not be fixed by the relationship of class and commodity rates which are on a more normal basis, but they afford no justification for the destruction of the relationship which had been maintained between the rates to Nashville and Birmingham from the time that specific rates were first published to these points. Such destruction found to result in undue prejudice to Birmingham and should be restored. *Western Grain Co. v. Director General*, as Agent, 335 (339).

Contention that if relief sought is granted it will result in complainants seeking similar relief from points other than here under consideration and the ultimate disruption of the entire rate adjustment. *Held*: Argument not a convincing factor in determining whether rates under attack are unjust, unreasonable, or otherwise unlawful. *Willapa Lumber Co. v. Director General*, as Agent, 659 (664).

DIVERSION. See also **RECONSIGNMENT.**

Tariff rule providing that only one change in destination would be permitted at the through rate, and that if subsequent change requested, shipment would be treated as a reshipment from point of reforwarding, found not unreasonable. Failure of carrier to promptly transmit instructions to disregard first diversion order, ample time intervening between dates when instructions received and complied with, resulted in charges in excess of those which would have accrued on basis of one diversion. Refund of overcharges directed. *Standard Oil Co. v. Director General*, as Agent, 143.

Lines serving final destinations, against which embargoes were in force, issued permits for diversion or reconsignment of certain shipments to such points. Carriers did not exercise their rights under the tariff to refuse to accept orders, but diverted or reconsigned shipments upon complainant's written instructions without requiring new bills of lading. *Held*: Combination rates to and from diversion or reconsignment points assessed found illegal to extent they exceeded through rates plus diversion, reconsignment, or other special charges. Reparation awarded. *Frick-Reid Supply Co. v. Director General*, as Agent, 151.

DIVIDENDS.

One purpose of the act is to prevent rebates effected by means of exorbitant divisions which find their way to proprietary companies through common carrier short lines. The commission can not overlook the fact that high dividends have been declared in the instant case in the past or that the accumulated surplus is now sufficient to declare a dividend of almost 100 per cent on the capital stock. Divisions received by Brimstone R. R. & Canal Co., 375 (386-387).

DIVISIONS.

Accorded the Marion & Eastern R. R. Co., out of joint rates on coal from mines on its line to points in Iowa, Wisconsin, and Nebraska, not found unjust, unreasonable, inequitable, or unjustly discriminatory. Marion & Eastern R. R. Co. v. C. & E. I. R. R. Co., 17.

Accorded the Missouri & North Arkansas R. R. Co., insufficient to meet the maintenance, traffic, transportation, and supervisory or general expenses properly to be charged against the freight traffic, to say nothing of taxes, net rental charges, or fair return on the property used in the service, found to be unjust, unreasonable, and inequitable. Just, reasonable, and equitable divisions prescribed. Division of Joint Rates and Fares of M. & N. A. R. R. Co., 47.

Before a change in divisions can be required, it must be shown that existing divisions are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between carriers participating in the joint rates, and the commission must prescribe just, reasonable, and equitable divisions to be received by the several carriers, determined according to the standards provided by law. Id. (50).

Under paragraph (6) of section 15 of the act, specific authority and direction are given the commission to consider, among other things, in prescribing and determining divisions, the "importance to the public of the transportation service" of the carriers concerned. Id. (50).

Duties and powers of the commission under the statute in prescribing and determining the divisions of joint rates, fares, and charges, discussed. Id. (50).

The law in its present form requires that the commission give due consideration, among other things, to the revenue needs of carriers participating in joint rates to enable them to pay operating expenses, taxes, and a fair return on the value of their carrier property used in the transportation service as well as to all other facts or circumstances which, without regard to the mileage haul, entitle one carrier to a greater or less proportion of a joint rate than is received by others. Id. (53).

Use of "equated ton-mile" formula by the commission in comparing the revenue needs of a carrier and its connections in reaching its determination on the question of just, reasonable, and equitable divisions. Id. (53).

Operating ratios are of value as showing trends in comparisons between carriers, but their use to show an alleged out-of-pocket cost can not be sustained. Such reasoning would prevent the reduction of any rate or division, no matter how extortionate or unreasonable, below that percentage of itself which is represented by the average operating ratio of the carrier involved. Id. (56-57).

In a proceeding involving divisions, the commission must consider the respective needs of all the carriers involved, and it can not determine a case by weighing operating ratios alone. The law requires that other elements be taken into account. Id. (58).

DIVISIONS—Continued.

Statement of apportionment of interline revenue for year 1920 as divided between the Missouri & North Arkansas R. R. and its connections. Appendix 1. Id. (58-59, 69).

Among facts and circumstances which would ordinarily entitle one carrier to a greater or less proportion than another carrier of a joint rate, fare, or charge, one of the most important is the average length of haul. The effect of relative lengths of haul on relative costs of transportation has long been recognized. Id. (60).

Density of traffic, grades, alignment, and other physical characteristics of a road are circumstances which ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another of the joint rate. Id. (60).

Fact that connecting lines are not earning a return upon the value of their property as great as was contemplated by section 15a of the act, does not preclude the commission from making a just, reasonable, and equitable adjustment of divisions. It is necessary that all essential transportation facilities of the country be kept in operation. Id. (61).

In reaching a decision on the question of just and reasonable divisions consideration given to the relation between the earnings realized by the carriers and the earnings contemplated by section 15a of the act and the value of the property of each carrier used in the transportation service, attaching such importance as deemed proper to such elements of value as were available and are recognized by the law of the land for rate-making purposes. Id. (61).

The reasonableness of a carrier's divisions need not be dwelt upon in detail, where the issue presented for determination is the reasonableness of rates and not what each carrier earns therefrom. *Riverside Coal Co. v. Director General, as Agent*, 205 (209).

Upon investigation, divisions received by the Brimstone R. R. & Canal Co., found unjust, unreasonable, and inequitable, and, to the extent that they exceed the cost of the service and a fair return upon the property of that company held for and used in service of transportation for the public generally, are excessive, and, in effect, a rebate to the Union Sulphur Co., the proprietary company. *Divisions Received by Brimstone R. R. & Canal Co.*, 375.

Where hauls differ by not more than 5 miles or thereabouts, each requiring two terminal services, the commission is not disposed to insist on a very material difference in divisions, especially where such a difference would induce an uneconomical handling of traffic via the more distant junction point. Id. (384).

As a prerequisite to receiving divisions a railroad must be a common carrier. Id. (386).

One purpose of the act is to prevent rebates effected by means of exorbitant divisions which find their way to proprietary companies through common-carrier short lines. The commission can not overlook the fact that high dividends have been declared in the instant case in the past or that the accumulated surplus is now sufficient to declare a dividend of almost 100 per cent on the capital stock. Id. (386-387).

In computing distance upon which the divisions to be received by a common-carrier short line are determined, the out-of-line or back-haul movement to track scales should not be included. Id. (388).

DIVISIONS—Continued.

Accorded the Federal Valley R. R. Co. on bituminous coal from mines on its line to interstate destinations not shown to have been or to be unjust, unreasonable, inequitable, or otherwise unlawful. Information furnished does not make possible adequate consideration of the various factors which paragraph (6) of section 15 of the act requires the commission to consider. *Federal Valley R. R. Co. v. T. & O. C. Ry. Co.*, 499.

Fact that a carrier has been operating at a deficit does not of itself prove that it is fairly entitled to increased divisions, and still less when it is coupled with the fact that the tonnage originating on its line has been far below normal. *Id.* (502).

DOMESTIC RATES. See EXPORT AND DOMESTIC; IMPORT AND DOMESTIC.

DOUBLE INCREASE.

Combination class rate on sporadic shipments of fish oil moving from Port St. Joe, Fla., to Ivorydale, Ohio, each component of which was increased under *Increased Rates, 1920*, 58 I. C. C., 220, found unreasonable to extent it exceeded lower joint commodity rate, theoretically constructed by adding such increase but once to a lower combination, subsequently established. Reparation awarded. *Procter & Gamble Co. v. A. N. R. R. Co.*, 121.

Contention that under General Order No. 28 of the director general the combination through rates and not the separate factors should have been increased, *Held*: Failure strictly to observe the terms of that order does not of itself impair the validity of the published rate, and that fact affords no basis for determining whether or not rates were reasonable. *Continental Paper Co. v. Director General, as Agent*, 162 (163).

Minimum charges on l. c. l. shipments under General Order No. 28 of the director general, added to each factor of combination rates and subsequently readjusted by application of such minimum charge but once to the through rate, found not unreasonable. *Swift & Co. v. Director General, as Agent*, 287 (290-291).

Rate on wheat from Sikeston and Benton, Mo., to Atlanta, Ga., constructed by addition of certain differentials to the rates from Cairo, Ill. Carriers under General Order No. 28 of the director general increased both the rates from Cairo to Atlanta, and the "bases for rates * * * to be used in arriving at rates" from and to points under consideration. *Held*: Tariff plainly increased rates from Cairo to Atlanta, but since it did not operate to increase the "bases" for constructing rates from Sikeston and Benton, shipments found overcharged and reparation awarded. *Charleston Milling Co. v. Director General, as Agent*, 525.

Inbound and outbound rates, both factors of which were increased under General Order No. 28 of the director general and assessed on cotton shipped from Louisiana points to Opelousas, La., for concentration and compression, thence reshipped to Pacific and Gulf coast points, found not unreasonable. Rule for eliminating the double increase was not applied for reason that carrier properly considered the shipments inbound and outbound as separate and distinct, due to shipper's failure to comply with transit rules. *DeJean v. Director General, as Agent*, 611.

DUTY OF CARRIER.

Demurrage charges assessed on a shipment held short of billed destination found illegal. Intermediate carrier failed to comply with delivery requirements as specified in bill of lading or to make inquiry of such delivering line for disposition orders. Furthermore, the obligation rested upon such carrier to complete its contract under the bill of lading and make tender of the shipment to the switching line for delivery specified. Reparation awarded. *Farrin Lumber Co. v. Director General, as Agent*, 127.

Where routing instructions given by shipper are incomplete it is the carrier's duty to move the shipment over the cheapest reasonably available route, and where this is not done misrouting results. *Carney v. Director General, as Agent*, 199 (200).

There is no duty on the part of common carriers subject to the act to provide tracks off their lands to effect connection with an industry. If an industry desires connection with a trunk line, the duty devolves upon it to make arrangements for the procuring of a spur. *Certain-Teed Products Corp. v. C., R. I. & P. Ry. Co.*, 260 (263).

It is not one of the common-carrier functions of pipe lines to protect the unwary from the irresponsible or unscrupulous, and where such protection is afforded through a rule which deprives legitimate shippers of the privilege of using their facilities the rule can not be sanctioned. *Brundred Bros. v. P. P. L. Co.*, 458 (465).

No legal obligation rests upon carriers to perform switching and spotting services solely at a shipper's convenience, and a shipper is not entitled to an allowance for these services if the carrier is ready and willing to perform them, but is not permitted to do so by the shipper. Shipper's refusal to permit carriers to perform such service would absolve them from the obligation to do so. *Stewart Furnace Co. v. P. R. R. Co.*, 528 (530).

DUTY OF COMMISSION.

The law in its present form requires that the commission give due consideration, among other things, to the revenue needs of carriers participating in joint rates to enable them to pay operating expenses, taxes, and a fair return on the value of their carrier property used in the transportation service, as well as to all other facts or circumstances which, without regard to the mileage haul, entitle one carrier to a greater or less proportion of a joint rate than is received by others. *Division of Joint Rates and Fares of M. & N. A. R. R. Co.*, 47 (53).

In a proceeding involving divisions, the commission must consider the respective needs of all the carriers involved, and it can not determine a case by weighing operating ratios alone. The law requires that other elements be taken into account. *Id.* (58).

In the absence of specific ratings or rates on an article shipped it becomes necessary for the commission to determine whether or not the charges collected were reasonable. *Refinite Co. v. Director General, as Agent*, 545 (546).

The commission can not agree with the contention that it must be guided solely by those things which are definite and certain in the past in fixing rates which will yield a specified return. The commission's function under the law is not that of mere computers and can not thus be atrophied. The duty to prescribe rates for the future carriers with it the obligation to exercise an informed judgment upon all pertinent facts, present and past, in order to forecast the future as best it may. *Reduced Rates, 1922*, 676 (730).

DUTY OF SHIPPER.

Rules and regulations published in tariffs are as binding as published rates, and shippers are chargeable with knowledge of them. *El Paso Chamber of Commerce v. Director General, as Agent*, 135 (137).

A shipper is not required to look beyond the face of a tariff. *Louis Werner Stave Co. v. Director General, as Agent*, 395 (397).

EARNINGS. *See also* RECAPTURE OF EXCESS EARNINGS; TON-MILE REVENUE.

The law in its present form requires that the commission give due consideration, among other things, to the revenue needs of carriers participating in joint rates to enable them to pay operating expenses, taxes, and a fair return on the value of their carrier property used in the transportation service as well as to all other facts or circumstances which, without regard to the mileage haul, entitle one carrier to a greater or less proportion of a joint rate than is received by others. *Division of Joint Rates and Fares of M. & N. A. R. R. Co.*, 47 (53).

In reaching a decision on the question of just and reasonable divisions the commission herein took into consideration the relation between the earnings realized by the carriers and the earnings contemplated by section 15a of the act. *Id.* (61).

Director general cancelled the "per car" rates on live stock and established rates in cents per 100 pounds. After termination of Federal control carriers restored the "per car" basis. *Held*: While transportation characteristics of live stock are different from those on lumber and grain, the earnings per car and per car-mile on the latter were substantially higher than those on live stock, which comparison tends to show that the charges assessed during the interim were not unreasonably high. *Carstens Packing Co. v. Director General, as Agent*, 125.

Impracticability of using the revenue on all freight as an exact yardstick by which to measure the rates on a particular commodity, even though it be low-grade traffic, illustrated. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (230-231).

If rates on all low-grade commodities should be reduced solely if and because they produced a higher revenue than the average of all freight, such a reduction would result in a lowering of the average which in turn would require a further reduction in the rates on the low-grade commodities, and this theory could be extended *ad infinitum*. *Id.* (231).

The Chicago-New York rate on which articles in the uniform brick list from points west of the Pittsburgh group are based, has by reason of successive general increases, become too high to permit the free movement of this desirable heavy-loading traffic between central and trunk-line territories, a situation which detracts from, rather than adds to, the revenues of the carriers. *Id.* (245-246).

Where only individual rates are assailed, the fact that in the past carriers' operations have been profitable is not of controlling importance in determining the reasonableness of rates. *Brundred Bros. v. Prairie Pipe Line Co.*, 458 (460).

Tables reflecting for class I carriers, including switching and terminal companies, the trend of operating revenues, expenses, and income by calendar years 1916-1921, and of net railway operating income since September 1, 1920, by months, the rate of return being adjusted to an annual basis according to seasonal variations. *Reduced Rates, 1922*, 676 (686-687).

EARNINGS—Continued.

High rates do not necessarily mean high revenues, for, if the public can not or will not ship in normal volume, less revenue may result than from lower rates. *Id.* (732).

EASTBOUND AND WESTBOUND.

Proposed reduced rates on sublimed lead and certain other pigments from central territory to eastern points, without corresponding reductions in westbound rates on the same commodities and without corresponding reductions from points east of the Buffalo-Pittsburgh line to eastern destinations, which would result in undue prejudice to manufacturers east of that line and in undue preference of manufacturers in central territory, found not justified. Sublimed Lead to Trunk Line Points, 343.

ECONOMIC CONDITIONS. See COMMERCIAL AND ECONOMIC CONDITIONS.**EMBARGOES.**

Lines serving final destinations, against which embargoes were in force, issued permits for diversion or reconsignment of certain shipments to such points. Carriers did not exercise their rights under the tariff to refuse to accept orders, but diverted or reconsigned shipments upon complainant's written instructions without requiring new bills of lading. *Held*: Combination rates to and from diversion or reconsignment points assessed found illegal to extent they exceeded through rates plus diversion, reconsignment, or other special charges. Reparation awarded. *Frick-Reid Supply Co. v. Director General, as Agent*, 151. Contention that if carriers were permitted to disregard existing rate schedules under General Order No. 1 of the director general and establish through routes to promote speed and efficiency of transportation, it would have been just and reasonable to allow shippers, when a route over which a transit arrangement applied was embargoed, to forward shipments via another route not embargoed, and to allow the adjustment of charges on the basis of the transit rate. *Held*: Carriers' agents were not authorized to divert shipments over routes not provided for in tariffs, when the route ordinarily used was embargoed. *Lee Pendergrass Cotton Co. v. Director General, as Agent*, 637 (642).

EMERGENCY SHIPMENT. See SPORADIC MOVEMENT.**EQUALIZING RATES.**

Proposed proportional rates, representing reductions, from Chicago, Ill., and related points to South Atlantic and Gulf ports for application on traffic destined to the Pacific coast by steamship lines operating through the Panama Canal, the primary purpose of which is to put the South Atlantic and Gulf ports on a parity with New York, N. Y., on traffic destined to the Pacific coast and to thus afford the southern lines an opportunity to secure some of the traffic now moving all rail or through North Atlantic ports by rail and water, found justified. Rates from Chicago via Panama Canal, 74.

In order to restore the parity in rates through the various gateways, on fresh meats, poultry, and packing-house products, destined to points in the southeast, carriers increased the rates via the Ohio River crossings in amounts exceeding those authorized in *Increased Rates, 1920*, 58 I. C. C., 220, to equalize them with rates via Memphis, Tenn. Contention that such equalization should have been brought about by reducing the rates via Memphis, sustained. Rates found unreasonable for the future and reasonable maximum rates prescribed. *Swift & Co. v. A., T. & S. F. Ry. Co.*, 157.

EQUALIZING RATES—Continued.

Proposed reduced rates on coal from mines in Wyoming to points in Utah for the purpose of restoring a previously existing equality in rates from such Wyoming mines and the Castle Gate district of Utah, found not justified. If reductions permitted the Utah State commission or the carriers might reduce the rates from the Utah mines, practically fixing a differential as warrant for their action, resulting in that destructive competition so out of consonance with the fundamentals of the act, and entailing a conflict of authority with the State commission, which would have no place in modern rate regulation. Coal from Wyoming Mines, 254.

"EQUATED TON-MILE."

Use of "equated ton-mile" formula by the commission in comparing the revenue needs of a carrier and its connections in reaching its determination on the question of just, reasonable, and equitable divisions. Division of Joint Rates and Fares of M. & N. A. R. R. Co., 47 (58).

ERROR.

Rates on tin cans from Cragin, Ill., to Stoughton, Wis., were the same as to Darwin, Wis., a farther distant point. Carriers erroneously applied the increase under *Increased Rates, 1920*, 58 I. C. C., 220, and accordingly reduced the rate to Darwin but not to Stoughton. Subsequently parity restored by establishment of a specific commodity rate to Stoughton. *Held*: Since Darwin rates were applicable to Stoughton, shipments were overcharged. Rate charged found unreasonable and reparation awarded. Wisconsin Dairy Products Co. v. C., M. & St. P. Ry. Co., 307.

EVIDENCE. See **PROOF**.

EXCESS EARNINGS. See **RECAPTURE OF EXCESS EARNINGS**.

EXPENSES. See **MAINTENANCE EXPENSES**; **OPERATING EXPENSES**.

EXPLOSIVES.

Double first-class rate on blasting caps and electric blasting caps found not unreasonable as compared with first-class rate on dynamite and other high explosives. Aetna Explosives Co. v. W. S. R. R. Co., 264.

EXPORT AND DOMESTIC.

As a rule, where different rates apply on two classes of traffic, i. e., export and domestic, those on export traffic are lower. Republic of France v. Director General, as Agent, 424 (426).

Domestic rate on galvanized wire from Grand Crossing, Ill., to Seattle, Wash., for export, assessed as a result of the cancellation of all export rates by the director general under General Order No. 28, found not unreasonable or unduly prejudicial as compared with export rate subsequently reestablished. Nagase & Co. v. Director General, as Agent, 539.

Contention that export rates are in effect proportional rates and should always be lower than domestic rates. *Held*: There is nothing inherent in export traffic that entitles it as such to take lower rates than domestic traffic. *Id.* (539-540).

EXPRESS RATES.

Class rates proposed by the American Ry. Express Co., for application between points in the United States and points in Canada found justified in so far as the divisions accruing for that part of the transportation between points in the United States and the international boundary are not in excess of rates prescribed or permitted by the commission for local hauls. Such readjustment results in some reductions and in no instance do the rates proposed equal the aggregate of intermediates. Express Class Rates Between United States and Canada, 20.

EXPRESS RATES—Continued.

The commission must regard the local rates of express carriers between border points and other points in the United States, and between points wholly within the Dominion of Canada, as just and reasonable. *Id* (24).

FACTOR. See also PROPORTIONAL RATES.

Combination rates applicable on waste paper from New York, Brooklyn, and Long Island City, N. Y., to Bogota, N. J., found unreasonable due to the factor beyond Little Ferry, N. J. Reparation awarded and reasonable maximum rates prescribed. *Continental Paper Co. v. Director General, as Agent*, 162.

Rate on fuel oil, in tank-car loads, from Ponca City, Okla., originally billed to Arkansas City, Kans., there rejected after placement for unloading and reconsigned to Hutchinson, Kans., found unreasonable to extent that the factor Arkansas City to Hutchinson exceeded lower distance commodity rate from Ponca City to Hutchinson via Arkansas City. Reasonable maximum rate prescribed and reparation awarded. *Empire Refineries (Inc.) v. Director General, as Agent*, 192.

Charges applicable on staves from New Orleans, La., to Frellsen, La., originating at interstate points, and from Frellsen to New Orleans, for export, found unreasonable as compared with rates between New Orleans and other near-by points for similar distances. Reasonable rate prescribed and reparation awarded. *Louis Werner Stave Co. v. Director General, as Agent*, 395.

Combination rate assessed on cement from Cape Girardeau, Mo., to Fisher, Ark., reconsigned to Little Rock, Ark., found unreasonable due to the factor from Fisher to Little Rock. Tariff naming lower joint rate from Cape Girardeau to Fisher and Little Rock provided, in accordance with rule 77 of Tariff Circular 18-A, that rates would be established from intermediate points, not exceeding those from more distant points. Reparation awarded. *Cape Girardeau Portland Cement Co. v. Director General, as Agent*, 635.

FARES. See PASSENGER FARES.**FEDERAL CONTROL.**

The commission would not be warranted in announcing any general rule for determining the reasonableness of rates exacted on shipments moving before or after June 25, 1918, on which date rates were increased by the director general, or any other date. In proceedings against the director general, as in all others, the commission must adhere to the sound and salutary principle that whether and to what extent a rate was or is unjust or unreasonable in a particular case is a question of fact, to be determined by the exercise of good judgment, informed by experience, in the light of all the pertinent facts of record. *Reparation as Relating to Increase of Rates*, 5.

Operating conditions prior to June 25, 1918, on which date rates were increased by the director general, including the retroactive application of the wage award of the Railroad Labor Board, were important factors, but they were not necessarily controlling in determining the reasonableness of rates after January 1 of that year. *Id.* (7).

FEDERAL CONTROL—Continued.

Class rate on cotton yarns from New Bedford Wharf, Mass., to Pier 40, North River, New York, N. Y., by water, during Federal control found unreasonable and unduly prejudicial to extent it exceeded lower commodity rate contemporaneously maintained on cotton piece goods, which lower rate was subsequently made applicable to cotton yarns. Reparation awarded. *New Bedford Board of Commerce v. Director General, as Agent*, 85.

Port-to-port rates were filed with the Shipping Board but not with the commission. Water line formed part of a combined rail-and-water system of transportation taken into Federal control by proclamation of the President, and thus came under the provisions of the Federal control act, and was under Federal control and operation during the period of movement. *Held*: Charges were collected "by or through the President," as contemplated by section 206 (c) of the transportation act, 1920, and are within the commission's jurisdiction. *Id.* (85-86.)

Contention that section 206 (f) of the transportation act, 1920, which provides that the period of Federal control shall be disregarded in computing the statutory period of limitation in claims to the commission for reparation for causes of action arising prior to Federal control, is inapplicable to claims that accrued more than two years prior to the passage of the transportation act, *Held*: Untenable, following *Thomas Iron Co.*, 57 I. C. C., 657. *Bloedel-Donovan Lumber Co. v. Director General, as Agent*, 95 (96).

Director general canceled the "per car" rates on live stock and established rates in cents per 100 pounds. After termination of Federal control carriers restored the "per car" basis. *Held*: While transportation characteristics of live stock are different from those on lumber and grain, the earnings per car and per car mile on the latter were substantially higher than those on live stock, which comparison tends to show that the charges assessed during the interim were not unreasonably high. *Carstens Packing Co. v. Director General, as Agent*, 125.

Contention that if reparation be awarded it should not be allowed on shipments moving more than two years prior to the filing of the complaint; that the limitation provision of the interstate commerce act not only barred the remedy on such shipments but terminated the liability; and that the liability, having been terminated, could not be revived by section 206 (f) of the transportation act, 1920, which eliminates the period of Federal control from the periods of limitation, not sustained. *Cocke Live Stock Co. v. B. & O. R. Ry. Co.*, 130 (133).

Following *Silica Sand Producers Asso.*, 64 I. C. C., 302, rates on imported flint pebbles and flint brick, increased 25 per cent and 2 cents, respectively, under General Order No. 28 of the director general, found not unreasonable as compared with rates on other commodities which were accorded a lower flat increase under the terms of that order. *Rock Products Traffic League v. B. & O. R. R. Co.*, 146.

Failure to adhere strictly to the terms of General Order No. 28 of the director general does not invalidate the published rates. The controlling question is whether the published rates were unreasonable or otherwise unlawful. *Id.* (148).

68 I. C. C.

FEDERAL CONTROL—Continued.

Shipper compared the rates on flint pebbles and flint brick with lower rates on other commodities primarily for the purpose of showing that the rates on such other commodities were accorded lower increases than flint pebbles and brick under General Order No. 28 of the director general. *Held*: Such comparisons alone are not conclusive that the higher rates are unreasonable. *Id.* (148).

Contention that under General Order No. 28 of the director general the combination through rates and not the separate factors should have been increased, *Held*: Failure strictly to observe the terms of that order does not of itself impair the validity of the published rate, and that fact affords no basis for determining whether or not rates were reasonable. *Continental Paper Co. v. Director General, as Agent*, 162 (163).

Following *Rutherford-Brede Co.*, 61 I. C. C., 515, failure of the director general to accord switching service on intrastate shipments of ore at Clarkdale, Ariz., during Federal control, or to reimburse complainant for furnishing said service as the agent of the director general found not in violation of the interstate commerce act or the Federal control act. Any redress to which complainant may be entitled found to rest with the courts. *United Verde Extension Mining Co. v. Director General, as Agent*, 271.

Contention that as carriers were under Federal control and operated as a unified system, and as routing specified by shippers was disregarded when speed and efficiency of service were thereby promoted, that shipments should have been forwarded via a lower rated route under General Order No. 1 of the director general, *Held*: That order provided that under certain circumstances the routing of shippers was to be disregarded, but also provided that rates applicable over routes designated should be observed. *National Supply Co. v. C., B. & Q. R. R. Co.*, 285 (286).

Minimum charges on l. c. l. shipments, under General Order No. 28 of the director general, subsequently readjusted by application of reductions found not unreasonable. Failure of carriers to strictly observe the terms of that order, filed with the commission by the President through his duly appointed agent, does not establish unreasonableness. *Swift & Co. v. Director General, as Agent*, 287.

Minimum charges on l. c. l. shipments under General Order No. 28 of the director general, added to each factor of combination rates and subsequently readjusted by application of such minimum charge but once to the through rate, found not unreasonable. *Id.* (290-291).

Domestic class rate on imported pyrethrum flowers, from Seattle and Tacoma, Wash., to Baltimore, Md., assessed as a result of the cancellation of all import rates by the director general under General Order No. 28, found unreasonable as compared with import commodity rates on various commodities from and to the same points, and to extent it exceeded import commodity rate subsequently established. Reparation awarded. *Gilpin, Langdon & Co. (Inc.) v. Director General, as Agent*, 292.

Neither the subsequent voluntary reduction of a rate nor the percentage of increase effectuated by General Order No. 28 of the director general alone are controlling factors in determining the reasonableness of rates. *Id.* (293).

FEDERAL CONTROL—Continued.

Contention that section 206 (f) of the transportation act, 1920, providing that the period of Federal control is not to be computed as a part of the periods of limitation in claims for reparation, is unconstitutional, not sustained, and excluding such period, claim as to shipments here involved found not barred. *Kalbfleisch Corp. v. C. of G. Ry. Co.*, 333 (334).

Right to recovery of damages suffered by payment of unreasonable freight rates is not affected by the fact that the Government happened to be both the purchaser and the carrier of the shipments. *Central Wisconsin Supply Co. v. Director General, as Agent*, 409 (411).

Rate on wheat from Sikeston and Benton, Mo., to Atlanta, Ga., constructed by addition of certain differentials to the rates from Cairo, Ill. Carriers under General Order No. 28 of the director general increased both the rates from Cairo to Atlanta, and the "bases for rates * * * to be used in arriving at rates" from and to points under consideration. *Held*: Tariff plainly increased rates from Cairo to Atlanta, but since it did not operate to increase the "bases" for constructing rates from Sikeston and Benton, shipments found overcharged and reparation awarded. *Charleston Milling Co. v. Director General, as Agent*, 525.

Domestic rates on galvanized wire from Grand Crossing, Ill., to Seattle, Wash., for export, assessed as a result of the cancellation of all export rates by the director general under General Order No. 28, found not unreasonable or unduly prejudicial as compared with export rate subsequently reestablished. *Nagase & Co. v. Director General, as Agent*, 539.

Inbound and outbound rates, both factors of which were increased under General Order No. 28 of the director general and assessed on cotton shipped from Louisiana points to Opelousas, La., for concentration and compression, thence reshipped to Pacific and Gulf coast points, found not unreasonable. Rule for eliminating the double increase was not applied for reason that carrier properly considered the shipments inbound and outbound as separate and distinct, due to shipper's failure to comply with transit rules. *DeJean v. Director General, as Agent*, 611.

The fourth section of the interstate commerce act does not apply to intrastate shipments moving during the period of Federal control. *Alaska Junk Co. v. Director General, as Agent*, 615 (616).

Tariff rule provided that in order to obtain the benefit of the through rate from point of original shipment to final destination, shipments be forwarded outbound from transit point over the rails of carrier having the inbound haul. Contention that during Federal control the line of the Yazoo & Mississippi Valley was the same as the line of the Missouri Pacific for the purpose of the application of the above rule, not sustained, as the lines were still distinguished by their corporate names. *Lee Pendergrass Cotton Co. v. Director General as Agent*, 637 (641).

Contention that if carriers were permitted to disregard existing rate schedules under General Order No. 1 of the director general and establish through routes to promote speed and efficiency of transportation, it would have been just and reasonable to allow shippers, when a route over which a transit arrangement applied was embargoed, to forward shipments via another route not embargoed, and to allow the adjustment of charges on the basis of the transit rate, *Held*: Carriers' agents were not authorized to divert shipments over routes not provided for in tariffs, when the route ordinarily used was embargoed. *Id.* (642).

FEDERAL CONTROL—Continued.

For many years the rate on soda ash from Detroit and Wyandotte, Mich., to Salem and Millville, N. J., was constructed on the basis of a 5 cent arbitrary over the rate to Philadelphia, Pa. Under General Order No. 28 of the director general, arbitrary increased to 6.5 cents. Subsequently former arbitrary restored via various routes and later via route of movement. *Held*: Rate charged during period of movement when lower rate in effect via routes other than route of movement found not unreasonable. *Salem Glass Works v. Director General, as Agent, 643.* Contention that an increase in an arbitrary, under General Order No. 28 of the director general, was illegal because published in a supplement to a loose-leaf tariff which provided in accordance with Tariff Circular 18-A that no supplement would be issued except to cancel the tariff, not sustained. In connection with increases provided under the general order, the commission temporarily waived the rule requiring all changes in and additions to tariffs issued in loose-leaf form to be made by reprinting both pages of the leaf upon which change is made. *Id. (643).*

FILING AND POSTING.

Port-to-port rates were filed with the Shipping Board but not with the commission. Water line formed part of a combined rail-and-water system of transportation taken into Federal control by proclamation of the President, and thus came under the provisions of the Federal control act, and was under Federal control and operation during the period of movement. *Held*: Charges were collected "by or through the President" as contemplated by section 206 (c) of the transportation act, 1920, and are within the commission's jurisdiction. *New Bedford Board of Commerce v. Director General, as Agent, 85-86.*

Section 6 of the act is intended to apply only to services, facilities, and privileges granted in connection with the actual handling or movement of freight or the transportation of, and the rendering of specified services to, passengers. *Certain-Teed Products Corp. v. C., R. I. & P. Ry. Co., 260 (262).*

Fact that a carrier is a common carrier corporation subject to the act generally does not operate as a bar to its engaging in lawful business activities other than common carriage, and charges in connection with such activities are not a proper subject of tariff publication. *Id. (262).*

FLEXIBLE LIMIT OF JUDGMENT.

The words "just and reasonable" imply the application of good judgment and fairness, of common sense and a sense of justice, to the facts of record, and are not fixed unalterable mathematical terms. Moreover, as has been recognized by the Supreme Court, 206 U. S., 1, 26, there must exist range for "the flexible limit of judgment which belongs to the power to fix rates" and there could be no flexible limit of judgment if all rates were to be measured by their relation to cost or by a predetermined rule. *Reparation as Relating to Increase of Rates, 5 (6).*

FREE TIME. See DEMURRAGE.**FREE TRANSPORTATION.**

The free transportation of a limited amount of baggage is an incident of, and is included within, the passenger-fare contract. Present passenger transportation fares generally permit the free transportation of 150 pounds of baggage per person. *Ellison-White Chautauqua System v. Director General, as Agent, 492 (495).*

"FROM TIME TO TIME."

Words as used in section 15a of the act, construed. *Reduced Rates*, 1922, 676 (680).

FLUCTUATIONS.

Rate stability is one of the important needs of commerce. It is a fundamental law of business that the anticipation of a falling market tends to restrict purchases. *Reduced Rates*, 1922, 676 (705, 733).

The needs of commerce can not be met if rates are to fluctuate with market prices of commodities. In bringing down a rate level to meet lowered expenses reductions should be made generally upon all commodities in substantially equal ratio. *Id.* (734).

FULL VISIBLE CAPACITY.

The actual loading of a car to 49 per cent of its capacity is so small in comparison with the possibility of loading to 83 per cent that the commission can not regard it as being loaded to "full visible capacity" within the ordinary meaning of that phrase. *California Cotton Mills Co. v. Director General*, as Agent, 403 (405).

Carload minimum applicable on shipments of hay not shown to have been unreasonable. Record does not contain positive evidence that baling was done properly or that cars were loaded to full visible capacity. *Gaynor Bros. v. Director General*, as Agent, 541.

FURNISHING CARS. See CAR FURNISHING.**FURTHER HEARING. See also SUPPLEMENTAL REPORT.**

In original report, 60 I. C. C., 421, it was found that the failure of carriers to increase their rates for intrastate traffic within Texas to correspond to the increases authorized in *Increased Rates*, 1920, 58 I. C. C., 220, resulted in undue preference of persons and localities in intrastate commerce within that State; in undue prejudice to persons and localities in interstate commerce; and in unjust discrimination against interstate commerce. Upon further hearing, order modified so as to exclude from its provisions the rates on refined sugar from Sugarland, Tex., to Texas common points. *Intrastate Rates within the State of Texas*, 25.

On further hearing, original report 55 I. C. C., 607, affirmed, and rates on refined petroleum oils, in tank-car loads, from Cushing, Pemeta, Oilton, and Blackwell, Okla., to Little Rock, Ark., moving as routed by shippers, found unreasonable to extent they exceeded lower rates via other routes prescribed by the commission in 18 I. C. C., 598, and 36 I. C. C., 109. Reasonable maximum rates prescribed and reparation awarded. *Roxana Petroleum Co. v. Director General*, as Agent, 77.

Upon further hearing, former report 56 I. C. C., 318, cubical-capacity carload minima on pine, fir, hemlock, larch, and spruce lumber, and articles taking the same group rates in closed cars, from North Pacific coast and Inland Empire to eastern destinations found unreasonable. Reasonable carload minima prescribed. *Lumber Carload Minima*, 98.

Upon further hearing, former report, 62 I. C. C., 1, the Wyandotte Terminal R. R. Co., found to be a common carrier subject to the act. *Wyandotte Terminal R. R. Co.*, 346.

FURTHER HEARING—Continued.

Upon further hearing, previous report, 55 I. C. C., 154, modified and rates on cottonseed products found not to have been reasonable maximum rates on copra and palm-kernel oil moving from New Orleans and Baton Rouge, La., to Kansas City and St. Louis, Mo., Chicago, Ill., Buffalo, N. Y., and other eastern points. Reparation awarded to basis of maximum rates found to have been reasonable when shipments moved. *Southport Mill (Ltd.) v. Director General*, 352.

On further hearing, previous report, 55 I. C. C., 154, rates on palm-kernel or copra oil, from New Orleans, La., to Jersey City and Babbitt, N. J., and Brooklyn, N. Y., in effect on and after June 25, 1918, found not unreasonable. *Id.* (352).

On further hearing, previous report, 55 I. C. C., 154, rates on palm-kernel meal from New Orleans, La., to Cedar Rapids, Iowa, Peoria, Ill., and other points in Illinois, and on copra cake from Rolling Fork, Miss., to New Orleans, La., found unreasonable. Reparation awarded to basis of maximum rates found to have been reasonable when shipments moved. *Id.* (352).

Upon further hearing, findings in original report, 58 I. C. C., 108, that rates on coconut oil, in tank-car loads, from Ivorydale, Ohio, to Macon, Ga., and in the opposite direction were unreasonable to extent that they exceeded the contemporaneous rates on cottonseed oil, affirmed. *Procter & Gamble Co. v. C., N. O. & T. P. Ry. Co.*, 373.

GATEWAYS.

In order to restore the parity in rates through the various gateways, on fresh meats, poultry, and packing-house products, destined to points in the Southeast, carriers increased the rates via the Ohio River crossings in amounts exceeding those authorized in *Increased Rates, 1920*, 58 I. C. C., 220, to equalize them with rates via Memphis, Tenn. Contention that such equalization should have been brought about by reducing the rates via Memphis, sustained. Rates found unreasonable for the future and reasonable maximum rates prescribed. *Swift & Co. v. A., T. & S. F. Ry. Co.*, 157.

GENERAL ORDERS OF THE DIRECTOR GENERAL. See **FEDERAL CONTROL GEOGRAPHICAL LOCATION.** See **LOCATION.**

GRAIN RATES.

Principle that "where practicable, rates through important grain markets should break into definitely known inbound and outbound components," adhered to. *Grain Rates from Minnesota and Wisconsin*, 665 (674).

GROUP RATES.

Rates on sand from Grinter, Kans., to points within the switching district of Kansas City Mo., were on a parity with rates from other Kaw River sand-producing points. Due to the general increases under General Order No. 28 of the director general and *Increased Rates, 1920*, 58 I. C. C., 220, relationship disrupted as to Grinter. *Held*: Rates from Grinter found unreasonable, as under a group arrangement that point should be included in the same group as such other Kaw River points. Reasonable rates prescribed and reparation awarded. *Stewart Sand Co. v. A., T. & S. F. Ry. Co.*, 111.

GROUP RATES—Continued.

Rates on bituminous coal from mines on the Ohio & Kentucky Ry. near O. & K. Junction, Ky., to Cincinnati, Ohio, and points in central and western territories found unreasonable to extent they exceeded the district rates from O. & K. Junction and points on the main line, and on branch lines or spur connections of the L. & N. Measure of reasonable maximum rates prescribed. *Riverside Coal Co. v. Director General*, as Agent, 205.

In passing upon the reasonableness of group rates, distances and ton-mile earnings between selected points can not be regarded as controlling. The reasonableness of such rates must be judged by average conditions. *Id.* (209).

Present interstate rates on articles in the uniform brick list, from Indiana-Illinois producing points, and from Canton, Ohio, and points grouped therewith or related thereto, to Chicago, Ill., and Milwaukee, Wis., and points taking the same rates, found unjust and unreasonable to extent they exceed rates constructed in accordance with the differentials over or under the Danville-Attica and Canton group rates herein prescribed. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (239-240).

Failure of carriers to treat the so-called Wabash Valley group, comprising the Danville, Veedersburg, and Terre Haute groups of producing points in Indiana and Illinois, as one group in all directions on long-haul interstate brick traffic, found unjust and unreasonable. On short-haul interstate traffic from points within this group to Indiana-Illinois points, the central territory distance scale, herein prescribed should be observed as maximum, subject to the group and differential adjustment to Chicago, Ill., and related points. *Id.* (243).

Under the general readjustment of rates herein required the present rate on articles in the uniform brick list from Pittsburgh, Pa., to New York, N. Y., found unreasonable and reasonable maximum base rate to apply from the Pittsburgh group to New York prescribed. *Id.* (245).

Under the general readjustment of rates herein prescribed on articles in the uniform brick list, rates between Chicago, Ill., and New York, N. Y., and from percentage groups west of the Pittsburgh group to New York found unreasonable. Reasonable maximum base rate and percentages thereof prescribed. *Id.* (246).

Proposal of the C. & E. I. Ry. to reduce the interstate rates on brick, and articles taking same rates, from Danville, Ill., in the Wabash Valley group, to East St. Louis, Ill., for purpose of placing East St. Louis on the same basis as Granite City, and to meet the rates in effect over the Wabash, found not justified. Failure to treat the Wabash Valley group as one group in all directions on long-haul traffic was condemned in *National Paving Brick Mfrs. Asso.*, 68 I. C. C., 213, 242, and undue prejudice already existing would be increased unless corresponding reductions were made from other points in the group. *Brick, Clay, and Clay Products*, 455.

Rates on talc from Hailesboro, Emeryville, and Talcville, N. Y., to Lucaston, N. J., based on a differential over the rates to Philadelphia, Pa., and points taking the same rates, found not unreasonable, discriminatory, or unduly prejudicial. *Lucas & Co. v. Director General*, as Agent, 581.

GROUP RATES—Continued.

Rates on lumber and forest products from points in western Washington on the Willapa Harbor branches of the Northern Pacific and C., M. & St. P. railways to destinations in Idaho, Utah, and Colorado, to extent they exceed joint rates on the coast group basis from points on the Southern Pacific, and Spokane, Portland & Seattle railways, south and west of Portland, Oreg., found unjust, unreasonable, and unduly prejudicial. Measure of reasonable maximum rates prescribed. *Willapa Lumber Co. v. Director General, as Agent*, 659.

HEATER CAR SERVICE.

Heater transit charges on potatoes shipped in Eastman cars from Aroostook County, Me., to Boston, Mass., New York, N. Y., Philadelphia, Pa., and certain group destinations, found not unreasonable. There is a substantial disparity between the heater transit rates and service here assailed and those maintained in western trunk line and northwestern territories. Since 1917 Eastman cars have been operated at a loss and during 1920-21, when rates here assailed were exacted, such cars did not earn a sufficient amount to allow for interest upon investment. *American Fruit & Vegetable Asso. v. B. & A. R. R. Co.*, 446.

HIGH RATES.

Do not necessarily mean high revenues, for, if the public can not or will not ship in normal volume, less revenue may result than from lower rates. Reduced rates, 1922, 676 (732).

IMPORT AND DOMESTIC.

Domestic class rate on imported pyrethrum flowers from Seattle and Tacoma, Wash., to Baltimore, Md., assessed as a result of the cancellation of all import rates by the director general under General Order No. 28, found unreasonable as compared with import commodity rates on various commodities from and to the same points, and to extent it exceeded import commodity rate subsequently established. Reparation awarded. *Gilpin, Langdon & Co. (Inc.) v. Director General, as Agent*, 292.

IMPORT TRAFFIC.

Proposed cancellation of storage in transit arrangement at Minnesota Transfer, Minn., on import traffic from Pacific coast ports destined, with certain exceptions, to all points south of the Ohio and Potomac and east of the Mississippi rivers, the effect of which would be to restrict the movement to routes via the Gulf and South Atlantic ports, found not justified. *Storage-in-Transit Rules at Minnesota Transfer*, 572.

INBOUND AND OUTBOUND.

Inbound and outbound rates, both factors of which were increased under General Order No. 28 of the director general and assessed on cotton shipped from Louisiana points to Opelousas, La., for concentration and compression, thence reshipped to Pacific and Gulf coast points, found not unreasonable. Rule for eliminating the double increase was not applied, for reason that carrier properly considered the shipments inbound and outbound as separate and distinct, due to shipper's failure to comply with transit rules. *DeJean v. Director General, as Agent*, 611.

Inbound and outbound rates on cotton from points in Arkansas to eastern mill points and the Gulf ports, concentrated and compressed at, and reshipped from, Helena, Ark., found not unreasonable via routes of movement. Contrary to tariff rule, but due to embargoes, car shortages, and other reasons, shipments were forwarded outbound from transit point over the rails of carriers which were different from those which performed the inbound movement. *Lee Pendergrass Cotton Co. v. Director General, as Agent*, 637.

INBOUND AND OUTBOUND—Continued.

Missouri Pacific tariff, concurred in by Missouri & North Arkansas R. R., provided for the application from transit point of the balance of the joint through rate from original point of shipment to final destination when shipments move outbound from transit point *over this line*. *Held*: Phrase "over this line" has reference to rails of Missouri Pacific and on shipments which moved into transit point via the Missouri & North Arkansas and outbound over the Missouri Pacific the transit rates were applicable. Shipments found overcharged and reparation awarded. *Id.* (641).

Tariff rule provided that in order to obtain the benefit of the through rate from point of original shipment to final destination, shipments be forwarded outbound from transit point over the rails of carrier having the inbound haul. Contention that during Federal control the line of the Yazoo & Mississippi Valley was the same as the line of the Missouri Pacific for the purpose of the application of the above rule not sustained, as the lines were still distinguished by their corporate names. *Id.* (641).

Principle that "where practicable, rates through important grain markets should break into definitely known inbound and outbound components" adhered to. Grain Rates from Minnesota and Wisconsin, 665 (674).

INCOME. See EARNINGS.

INCOME TAX. See TAXES.

INCREASED RATES. See ADVANCE IN RATES; DOUBLE INCREASE.

INSPECTION IN TRANSIT. See TRANSIT ARRANGEMENTS.

INTENTION.

Intention of tariff framers can not be considered, and if there is ambiguity in tariffs they should be construed against the framer. Northwest Steel Co. v. Director General, as Agent, 195 (198).

Tariffs are to be construed according to their language, and the intention of the framers is not controlling. Carney v. Director General, as Agent, 309 (310).

Demurrage and storage charges assessed on shipments of wet nitrocellulose and wet picric acid, for export, found to have been illegal. While it may have been the intention of carrier to limit the free time on such export shipments to either 48 or 24 hours and provide for storage thereafter, and to charge demurrage in accordance with its general demurrage tariffs, the tariffs failed to carry that intention into effect. Tariffs must be construed strictly according to their terms, and the intention of the framers is not controlling. Reparation awarded. Republic of France v. Director General, as Agent, 419.

INTERCHANGE SWITCHING.

Failure of carriers to absorb interchange switching charges at Harvard, Ill., found not unreasonable, discriminatory, or unduly prejudicial. Carriers absorb no switching charges at Harvard, and in view of the dissimilarity of conditions between that point and at Aurora, Sterling, and Freeport, Ill., and Janesville, Wis., where competitors are located and where under reciprocal arrangements carriers absorb the switching charges of connecting lines, the different practices are not shown to result in undue prejudice. Hunt, Helm, Ferris & Co. v. C. & N. W. Ry. Co., 283.

INTERCHANGE SWITCHING—Continued.

Interchange switching charge of the Chicago, Harvard & Geneva Lake Ry., an electric line, at Harvard, Ill., found not unreasonable, but charge of the C. & N. W. Ry. at that point found unreasonable to extent it exceeded interterminal switching charge maintained from industries on its rails to interchange tracks of connecting lines when destined to industrial tracks of such lines within the switching limits of one station or industrial switching district. Reasonable charge prescribed. *Id.* (283).

Switching charges of Peoria & Pekin Union Ry. Co., effective between its rails and the rails of the Minneapolis & St. Louis R. R. Co., and proposed between the rails of the Peoria Ry. Term. Co. at Peoria, Ill., and the tracks of the Pekin Union at Peoria and East Peoria, Ill., found unjustly discriminatory and unduly prejudicial. The Pekin Union performs interchange service between the rails of its tenants and the C., B. & Q. and C., R. I. & P. without compensation except such as it receives under contracts with its tenant lines. *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, 412.

Carriers whose rails do not connect at interchange points may join in the establishment of through routes and joint rates, and may employ a switching line to effect transfer of traffic between their rails. The extent to which each shall participate in compensating the switching line under such an arrangement is largely a matter of agreement between the employing carriers. In the absence of agreement to the contrary, it would not seem unfair that the expense should be shared equally. *Id.* (417).

Following *Interchange Switching at Wichita*, 61 I. C. C., 205, proposed increased charges for interchange switching at certain Missouri Pacific stations in Kansas and Missouri, found not justified. While present charges may be low, record is insufficient to warrant a definite finding of what would be reasonable. *Switching Charges in Kansas and Missouri*, 548.

Fact that interchange switching rates are or are not reciprocal, is unimportant, as the so-called reciprocity theory of establishing switching charges has been condemned by the commission. *Reciprocal Switching at Kansas City*, 591 (596).

INTERCORPORATE RELATIONSHIPS.

One purpose of the act is to prevent rebates effected by means of exorbitant divisions which find their way to proprietary companies through common carrier short lines. The commission can not overlook the fact that high dividends have been declared in the instant case in the past or that the accumulated surplus is now sufficient to declare a dividend of almost 100 per cent on the capital stock. *Divisions Received by Brimstone R. R. & Canal Co.*, 375 (386-387).

Complaint of the Prescott & N. W. R. R. Co., seeking release from the application of the commission's orders in *The Tap Line case*, 31 I. C. C., 490, not sustained. The commission has consistently refused to release any tap line from the application of such orders in the absence of complete separation from the control of any lumber company in active operation and served by it. There still exists a substantial community of interest between complainant and the Ozan-Graysonia Lumber Co. and complete control of the former by the majority stockholders of the latter. *Prescott & Northwestern R. R. Co. v. M. P. R. R. Co.*, 487.

68 I. C. C.

INTERMEDIATE CARRIER.

Combination rate to and from Birmingham, Ala., assessed on shipments of pig iron moving as routed via the Birmingham Southern from North Birmingham, Ala., to New Orleans, La., found illegal. Tariff prohibited participation of that carrier as an intermediate carrier in the movement from specified stations to specified stations, but did not prohibit it from participating in a movement from one of those points *through* another of those points to a destination not named therein. Birmingham group rate found legally applicable and reparation awarded. *Tutwiler & Brooks v. S. Ry. Co.*, 311.

INTERMEDIATE MARKETS.

If carriers propose rate reductions which they justify in part upon the ground that they are restricted to certain originating territory and upon the ground that they are subject to transit privileges at intermediate markets, they should be able to show that the rates will in fact be so restricted and that they will in fact be subject to such transit provision. Grain Rates from Minnesota and Wisconsin, 665 (675).

INTERMEDIATE POINT.

Demurrage charges assessed on a shipment held short of billed destination found illegal. Intermediate carrier failed to comply with delivery requirements as specified in bill of lading or to make inquiry of such delivering line for disposition orders. Furthermore, the obligation rested upon such carrier to complete its contract under the bill of lading and make tender of the shipment to the switching line for delivery specified. Reparation awarded. *Farrin Lumber Co. v. Director General, as Agent*, 127.

A mere accident of transportation, whereby a shipment was carried through destination to the next farther distant point and then hauled back to its destination, does not have the effect of making such farther distant point an intermediate point within the meaning of the fourth section of the act. *Humble Pipe Line Co. v. Director General, as Agent*, 651 (652).

INTERMEDIATE SWITCHING.

Carriers whose rails do not connect at interchange points may join in the establishment of through routes and joint rates and may employ a switching line to effect transfer of traffic between their rails. The extent to which each shall participate in compensating the switching line under such an arrangement is largely a matter of agreement between the employing carriers. In the absence of agreement to the contrary, it would not seem unfair that the expense should be shared equally. *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, 412 (417).

INTERVENERS.

Petition in intervention tendered at the hearing in support of a complaint alleging unreasonableness and undue prejudice attempted to put in issue rates from points not specifically set forth in the complaint. *Held*: To extent that petition thus broadens the issue, it can not be considered. *Swift & Co. v. A., T. & S. F. Ry. Co.*, 157.

INTRASTATE RATES. See STATE RATES.**INVESTIGATION.**

Upon further hearing, former report 56 I. C. C., 318, cubical-capacity carload minima on pine, fir, hemlock, larch, and spruce lumber, and articles taking the same group rates, in closed cars, from North Pacific coast and Inland Empire to eastern destinations found unreasonable. Reasonable carload minima prescribed. *Lumber Carload Minima*, 98.

INVESTIGATION—Continued.

Upon investigation, divisions received by the Brimstone R. R. & Canal Co., found unjust, unreasonable, inequitable, and, to the extent that they exceed the cost of the service and a fair return upon the property of that company held for and used in service of transportation for the public generally, are excessive and, in effect, a rebate to the Union Sulphur Co., the proprietary company. Divisions Received by Brimstone R. R. & Canal Co., 375.

Upon investigation, *Held*: Freight rates and charges which were increased by authority of *Increased Rates, 1920*, 58 I. C. C., 220 and 302, found unreasonable on and after July 1, 1922, to extent that they exceed the rates in effect immediately prior to such increases by specified percentages; and on and after March 1, 1922, a fair return upon the aggregate value of carriers defined in section 15a of the act, determined as therein provided, will be 5½ per cent of such aggregate property value as a uniform percentage for all rate groups or territories designated by the commission. *Reduced Rates, 1922*, 676.

ISOLATED SHIPMENT. See **SPORADIC MOVEMENT.**

ISSUANCE OF SECURITIES. See **SECURITIES.**

ISSUE.

Complaints assailed certain rates as unjust, unreasonable, unlawful, discriminatory, unduly preferential, and unduly prejudicial in violation of certain State laws but did not allege a violation of any acts administered by the commission. *Held*: Complaints found to fairly present violations of Federal laws which the commission has jurisdiction to administer and further allegations that the rates were in violation of certain State laws may be treated as surplusage. *Wasatch Coal Co. v. Director General, as Agent*, 118.

Petition in intervention tendered at the hearing in support of a complaint alleging unreasonableness and undue prejudice attempted to put in issue rates from points not specifically set forth in the complaint. *Held*: To extent that petition thus broadens the issue it can not be considered. *Swift & Co. v. A., T. & S. F. Ry Co.*, 157.

The reasonableness of a carrier's divisions, or of a proposed rate, need not be dwelt upon in detail where the issue presented for determination is the reasonableness of the present rates and not what each carrier earns therefrom. *Riverside Coal Co. v. Director General, as Agent*, 205 (209.)

JOINT AND SEVERAL LIABILITY. See **LIABILITY.**

JOINT RATES.

Proposed cancellation of, on lumber and articles taking the same rates from points on the Spokane, Portland & Seattle to destinations in Montana, Idaho, Utah, and east on the Union Pacific system and connections, which would result in the application of higher combinations, found not justified except as to points of origin west of Vancouver, Wash. *Elimination of Routing on Lumber*, 71.

JUNK.

Rates on scrap aluminum in straight carloads, or when mixed with other scrap metals, including scrap brass, copper, and tin, found unreasonable to extent they exceeded the rates applicable on straight or mixed carloads of scrap copper, brass, and tin. Measure of reasonable maximum rates prescribed. *Loewenthal Co. v. C. & N. W. Ry. Co.*, 115.

JUNK—Continued.

Fifth-class rating and rates governed by official classification on scrap rubber, including tires, having value only for reclamation of raw materials, found unreasonable to extent they exceed sixth class. Other scrap materials with which scrap rubber does not compare unfavorably, either in value or from a transportation standpoint, are rated sixth class. *Nat'l. Asso. Waste Material Dealers v. A. A. R. R. Co.*, 748.

JURISDICTION. *See also* CONFLICT OF JURISDICTION.

Under paragraph (6) of section 15 of the act, specific authority and direction are given the commission to consider, among other things, in prescribing and determining divisions, the "importance to the public of the transportation service" of the carriers concerned. *Division of Joint Rates and Fares of M. & N. A. R. R. Co.*, 47 (50).

Duties and powers of the commission under the statute in prescribing and determining the divisions of joint rates, fares, and charges, discussed. *Id.* (50).

Port-to-port rates were filed with the Shipping Board but not with the commission. Water line formed part of a combined rail-and-water system of transportation taken into Federal control by proclamation of the President, and thus came under the provisions of the Federal control act, and was under Federal control and operation during the period of movement. *Held*: Charges were collected "by or through the President" as contemplated by section 206 (c) of the transportation act, 1920, and are within the commission's jurisdiction. *New Bedford Board of Commerce v. Director General, as Agent*, 85-86.

The interstate commerce act, as amended by the transportation act, 1920, applies to common carriers engaged in the transportation of property only in so far as such transportation takes place within the United States. *Bloedel-Donovan Lumber Co. v. Director General, as Agent*, 95 (96).

Complaints assailed certain rates as unjust, unreasonable, unlawful, discriminatory, unduly preferential, and unduly prejudicial in violation of certain State laws, but did not allege a violation of any acts administered by the commission. *Held*: Complaints found to fairly present violations of Federal laws which the commission has jurisdiction to administer, and further allegations that the rates were in violation of certain State laws may be treated as surplusage. *Wasatch Coal Co. v. Director General, as Agent*, 118.

The commission must look to the substance of a complaint rather than to its form. One of the essential elements of a complaint is allegation of a violation of a law which the commission has jurisdiction to administer. *Id.* (120).

Collection of a trackage charge by the Chicago, Ottawa & Peoria Ry. Co., for the use of a portion of its track at Marseilles, Ill., operated as a private switch track, found not unlawful. The amount of consideration paid for the use of this track is a matter of private contract over which the commission has no jurisdiction. *Certain-Teed Products Corp. v., C., R. I. & P. Ry. Co.*, 280.

JURISDICTION—Continued.

Following *Rutherford-Brede Co.*, 61 I. C. C., 515, failure of the director general to accord switching service on intrastate shipments of ore at Clarkdale, Ariz., during Federal control, or to reimburse complainant for furnishing said service as the agent of the director general, found not in violation of the interstate commerce act or the Federal control act. Any redress to which complainant may be entitled found to rest with the courts. *United Verde Extension Mining Co. v. Director General, as Agent*, 271.

Where a shipper acts as agent of line-haul carriers for the performance of a service, it is entitled to compensation for what its services under that employment are worth, and may sue for it in a court of competent jurisdiction. *Id.* (272).

The commission is without jurisdiction to prescribe rates for the future or to award reparation on intrastate shipments moving prior to Federal control. *Cheseborough Mfg. Co. v. Director General, as Agent*, 555.

The fourth section of the interstate commerce act does not apply to intrastate shipments moving during the period of Federal control. *Alaska Junk Co. v. Director General, as Agent*, 615 (616).

It is not the commission's function to deal with wage scales, but it must recognize the connection between necessary revenues and relatively high operating expenses. *Reduced Rates, 1922*, 676 (689).

The commission has no authority to require carriers to establish for particular passengers or particular occasions special fares lower than the regular fares. *Id.* (729).

"JUST AND REASONABLE."

Words imply the application of good judgment and fairness, of common sense and a sense of justice, to the facts of record and are not fixed, unalterable mathematical terms. Moreover, as has been recognized by the Supreme Court, 206 U. S., 1, 26, there must exist range for "the flexible limit of judgment which belongs to the power to fix rates," and there could be no flexible limit of judgment if all rates were to be measured by their relation to cost or by a predetermined rule. *Reparation as Relating to Increase of Rates*, 5 (6).

KANSAS CITY SWITCHING DISTRICT.

Rates on sand from Grinter, Kans., to points within the switching district of Kansas City, Mo., were on a parity with rates from other Kaw River sand-producing points. Due to the general increases under General Order No. 28 of the director general and *Increased Rates, 1920*, 58 I. C. C., 220, relationship disrupted as to Grinter. *Held*: Rates from Grinter found unreasonable, as under a group arrangement that point should be included in the same group as such other Kaw River points. Reasonable rates prescribed and reparation awarded. *Stewart Sand Co. v. A., T. & S. F. Ry. Co.*, 111.

KNOCKED DOWN. *See SET UP AND KNOCKED DOWN.*

LEGAL RATES. *See also OVERCHARGES.*

Where carriers, in publishing tariffs, failed to restrict the application of certain rates to tin or other metal caps, such rates found to be applicable to shipments of paper bottle-neck wrappers or caps. Refund of overcharges directed. *Los Angeles Ice & Cold Storage Co. v. Director General, as Agent*, 155.

LEGAL RATES—Continued.

Transcontinental class A rate applicable on "Machinery and machines—Engines, steam or internal combustion, n. o. i. b. n." and assessed on steam turbines found to have been illegal. Shipments found entitled to lower combination commodity rate applicable under tariff description of "Machinery and machines, * * * Turbines and parts thereof," which item was not limited to exclude steam turbines. *Northwest Steel Co. v. Director General, as Agent*, 195.

Rate on "furnaces, air or steam," assessed on shipments of cast-iron furnaces with sheet-metal casings and caps, k. d., and crated, found legally applicable and not unreasonable or discriminatory. Tariff provided a lower rate on "cast-iron furnaces, k. d.," but in view of the fact that complainant's furnaces comprised as an integral and necessary part sheet-iron casings, contention that such lower rate was applicable not sustained. *Monitor Stove Co. v. Director General, as Agent*, 305.

Charges on two carloads of ice from Trevor, Wis., and Lake Marie (Antioch), Ill., for industrial delivery in Chicago, Ill., on the Illinois Northern Ry., based upon commodity rates of 3 and 4 cents per 100 pounds, respectively, found in excess of those legally applicable. Tariff provided that when charges exceeded \$15 per car an arbitrary of \$3.50 for industrial delivery should be added, and from that amount \$6 per car will be absorbed, the remainder constituting the through rate to final destination. Refund of overcharges directed. *Carney v. Director General, as Agent*, 309.

Combination rate to and from Birmingham, Ala., assessed on shipments of pig iron moving as routed via the Birmingham Southern from North Birmingham, Ala., to New Orleans, La., found illegal. Tariff prohibited participation of that carrier as an intermediate carrier in a movement from specified stations to specified stations, but did not prohibit it from participating in a movement from one of those points *through* another of those points to a destination not named therein. Birmingham group rate found legally applicable and reparation awarded. *Tutwiler & Brooks v. S. Ry. Co.*, 311.

Switching charges collected on interstate traffic at Albany, Ga., found to have been illegally assessed. Tariffs did not authorize the imposition of a charge for the services performed which were merely the receipt and delivery of cars at a point on complainant's siding just far enough off carrier's main-line track so as not to interfere with traffic moving over that track. Refund directed. *Hardaway Contracting Co. v. G. S. W. & G. R. R. Co.*, 331.

Commodity rates were prepaid on alcohol of an "actual value not exceeding \$2.50 per gallon." Subsequently on the ground that actual value exceeded \$2.50 charges were corrected to the basis of class rates applicable on alcohol without limitation as to value. *Held*: Limitations attached to commodity rates were unlawful and void under the Cummins amendment, but such commodity rates were lawful and applicable as to these shipments, as commodity rates take preference over class rates and specific commodity rates take preference over general commodity rates. Shipments found overcharged and refund directed. *U. S. Industrial Alcohol Co. v. Director General*, 389.

There can not be at the same time rates legally applicable and other rates "technically" legally applicable. There can be but one applicable rate at the same time over the same route between the same points on the same traffic. *Id.* (392).

LEGAL RATES—Continued.

What the second Cummins amendment declares to be unlawful it also declares to be void. It does not declare any rate to be void. A void rate would be without legal effect and could not be legally applicable. *Id.* (392).

In publishing tariffs carrier failed to show as clearly as it should have done that a switching rate superseded a group rate formerly in effect. Contention that switching charge was not legally established because item in which that charge was published did not specifically refer to and cancel the line-haul rate, and tariff naming that rate was not at the same time correspondingly amended in accordance with the provisions of rule 8 (a) of Tariff Circular 18-A, and that shipments were undercharged, not sustained. *Louis Werner Stave Co. v. Director General, as Agent*, 395 (396-398).

Combination rates and charges on wheat from Lucas, Kans., inspected at Salina, Kans., and diverted to points in California, found illegal. There was nothing in a tariff naming lower joint rate which would have precluded shipper from routing through Salina had shipments been billed direct from Lucas to the California points; such lower joint rate was not restricted to apply via any particular route or the reconsigning privileges in connection therewith to any particular point; and Salina, being directly intermediate between points of origin and destination via route of movement, shipments were entitled to the inspection privilege at that point without additional charge. Reparation awarded. *Freeman Grain Co. v. Director General, as Agent*, 559.

Shipments of tops, bottoms, and sides, which had been nailed, cleated, or wired into shapes making it necessary only to twist together four wires and add a few nails to produce a complete set-up crate, found not to be crate material as described in the tariff, but knocked-down poultry crates or coops. *Day & Co. v. Director General, as Agent*, 656.

LESS THAN CARLOADS.

Minimum charges on l. c. l. shipments, under General Order No. 28 of the director general, subsequently readjusted by application of reductions found not unreasonable. Failure of carriers to strictly observe the terms of that order, filed with the commission by the President through his duly appointed agent, does not establish unreasonableness. *Swift & Co. v. Director General, as Agent*, 287.

Minimum charges on l. c. l. shipments under General Order No. 28 of the director general, added to each factor of combination rates and subsequently readjusted by application of such minimum charge but once to the through rate, found not unreasonable. *Id.* (290-291).

Rates on ground wormseed, in bags and barrels, l. c. l., found unreasonable to extent they exceeded third-class ratings and rates on other kinds of seed in less than carloads. Reasonable maximum rates prescribed and reparation awarded. *Standard Chemical Mfg. Co. v. Director General, as Agent*, 467.

Proposed cancellation of l. c. l. commodity rates and application of higher class rates in lieu thereof on burlap and gunny bags from St. Louis, Mo., East St. Louis, Ill., and upper Mississippi River crossings to destinations in central territory, found justified. *Burlap and Gunny Bags from St. Louis*, 587.

LIABILITY. See also LIMITATION OF LIABILITY.

The charging of an unreasonable rate is a tort and the parties to such a rate are jointly and severally liable for any resulting damage. *Bloedel-Donovan Lumber Co. v. Director General, as Agent*, 95 (96).

Carriers' rights and responsibilities in connection with transit arrangements are joint, and all parties to joint through rates are entitled to a voice when questions arise as to whether there shall be a transit arrangement, a charge therefor, or its amount. No action should be taken that would put a burden on shippers pending settlement. Charge should be published as a joint charge and should be collected by the carrier that can do so with the greater efficiency and convenience, and divided in proportion to the expenses incurred by each line. *Illinois Central R. R. Co. v. N. O. G. N. R. R. Co.*, 505.

LIGHTERAGE. See CAR FLOATING.**LIKE KINDS OF TRAFFIC. See ANALOGOUS ARTICLES; COMPARATIVE RATES; SECTION 2.****LIMITATION OF ACTION.**

Contention that section 206 (f) of the transportation act, 1920, which provides that the period of Federal control shall be disregarded in computing the statutory period of limitation in claims to the commission for reparation for causes of action arising prior to Federal control, is inapplicable to claims that accrued more than two years prior to the passage of the transportation act, *Held*: Untenable following *Thomas Iron Co.*, 57 I. C. C., 657. *Bloedel-Donovan Lumber Co. v. Director General, as Agent*, 95 (96).

Contention that if reparation be awarded it should not be allowed on shipments moving more than two years prior to the filing of the complaint; that the limitation provision of the act not only barred the remedy on such shipments but terminated the liability; and that the liability, having been terminated, could not be revived by section 206 (f) of the transportation act, 1920, which eliminates the period of Federal control from the periods of limitation, not sustained. *Cocke Live Stock Co., v. B., S. L. & W. Ry. Co.*, 130 (133).

Contention that section 206 (f) of the transportation act, 1920, providing that the period of Federal control is not to be computed as a part of the periods of limitation in claims for reparation, is unconstitutional, not sustained, and excluding such period, claim as to shipments here involved found not barred. *Kalbfleisch Corp. v. C. of G. Ry. Co.*, 333 (334).

LIMITATION OF LIABILITY. See also LIABILITY.

Commodity rates were prepaid on alcohol of an "actual value not exceeding \$2.50 per gallon." Subsequently, on the ground that actual value exceeded \$2.50, charges were corrected to the basis of class rates applicable on alcohol without limitation as to value. *Held*: Limitations attached to commodity rates were unlawful and void under the Cummins amendment, but such commodity rates were lawful and applicable as to these shipments, as commodity rates take preference over class rates and specific commodity rates take preference over general commodity rates. Shipments found overcharged and refund directed. *U. S. Industrial Alcohol Co. v. Director General*, 389.

Neither the first nor the second Cummins amendment invalidated rates based on actual differences in value. The plain and unmistakable purpose of both amendments was to make unlawful and void, except as otherwise provided therein, all attempted limitations of liability for loss, damage, or injury to property transported, without respect to the manner or form in which they are sought to be made. *Id.* (391).

LIMITATION OF LIABILITY—Continued.

It is immaterial whether bills of lading are made out by shippers or carriers' agents. Where value stated therein is declared by shippers such declarations of value do not directly limit carriers' liability. If goods are lost or damaged in transit and shippers make claims based on values in excess of that declared, they are subject to prosecution under section 10 of the act. Thus carriers' liability is indirectly, but effectively, limited by these necessary declarations of value, and such limitations as to value attached to rates are unlawful and void. *Id.* (391-392).

LINE HAUL.

Proposal of the C., M. & St. P. Ry. Co. to eliminate the Green Fruit Auction Co. from list of industries on its rails at Chicago, Ill., and to apply switching charges on fruits destined thereto when the road haul has been performed by other carriers, found justified. Fact that switching charge will in some cases accrue against the traffic does not of itself constitute a ground for condemning the schedule; several routes will be available for delivery at the Chicago rates and the auction house will be substantially as well circumstanced, from the standpoint of free terminal delivery, as are other auction houses. *Green Fruit Auction Co.'s Elimination from Industries*, 89.

The work of making and breaking up trains and the arrangement of cars in a train in station order are road and not switching services. *Reciprocal Switching at Kansas City*, 591 (600).

LOADING.

While minima should be high enough to insure a proper utilization of equipment, they should not exceed what can be reasonably and generally loaded. In fixing reasonable minima some leeway should be accorded for commercial conditions and the minima should not require the loading of all cars to their utmost capacity. *Lumber Carload Minima*, 98 (106).

Based upon mathematical calculations of cars and containers used, charges on certain shipments of cotton twine and cotton-factory sweepings found to have been based on minimum weights which could not be loaded in cars furnished. Reparation awarded. *California Cotton Mills Co. v. Director General*, as Agent, 403.

The actual loading of a car to 49 per cent of its capacity is so small in comparison with the possibility of loading to 83 per cent that the commission can not regard it as being loaded to "full visible capacity" within the ordinary meaning of that phrase. *Id.* (405).

LOCAL RATES. See also COMBINATION RATES.

The commission must regard the local rates of express carriers between border points and other points in the United States, and between points wholly within the Dominion of Canada, as just and reasonable. *Express Class Rates between United States and Canada*, 20 (24).

LOCATION.

Rates on new empty slack and tight wooden barrels and kegs from St. Louis, Mo., to Evansville, Ind., Louisville, Ky., and Cincinnati, Ohio, found not unreasonable, discriminatory, or unduly prejudicial in comparison with rates on like traffic from Memphis, Tenn., and between other points for comparable distances. Complainants' disadvantage is due to their geographical location rather than to the freight rates and for the past six years there have been no new barrels or kegs shipped from Memphis to the destinations named. *Pioneer Cooperage Co. v. B. & O. R. R. Co.*, 645.

LONG AND SHORT HAUL.

In General: The fourth section of the act does not apply to intrastate shipments moving during the period of Federal control. *Alaska Junk Co. v. Director General, as Agent*, 615 (616).

Burlington, Iowa: Rates on furniture from North Carolina and Virginia points to, higher than to farther distant points, unprotected by appropriate application, found unlawful. Reparation denied for want of proof. *Chittenden & Eastman Co. v. Director General, as Agent*, 267 (268).

La Fayette, Ind.: Application for authority to charge on old rails from Chicago, Ill., to Mobile, Ala., rates which are lower than on like traffic from La Fayette and other intermediate points, denied. *Standard Rail & Steel Co. v. L. & N. R. R. Co.*, 9 (10).

Mason City, Iowa: Application seeking authority to continue to charge for the transportation of packing-house products from Mason City to Duluth, Minn., rates which are higher than the rates from Chicago, Ill., and other farther distant points to the same destinations, denied. *Decker & Sons. v. Director General, as Agent*, 84.

LONG-HAUL TRAFFIC.

Common brick is ordinarily short-haul traffic, and for abnormal movements, or those in excess of 150 miles, carriers may reasonably charge the same rates as on face brick. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (222).

Failure of carriers to treat the so-called Wabash Valley group, comprising the Danville, Veedersburg, and Terre Haute groups of producing points in Indiana and Illinois, as one group in all directions on long-haul interstate brick traffic, found unjust and unreasonable. *Id.* (243).

LOOSE-LEAF TARIFF. See SUPPLEMENT.

LOSS AND DAMAGE.

Neither the first nor the second Cummins amendment invalidated rates based on actual differences in value. The plain and unmistakable purpose of both amendments was to make unlawful and void, except as otherwise provided therein, all attempted limitations of liability for loss, damage, or injury to property transported, without respect to the manner or form in which they are sought to be made. *U. S. Industrial Alcohol Co. v. Director General*, 389 (391).

LOW-GRADE COMMODITY.

If rates on all low-grade commodities should be reduced solely if and because they produced a higher revenue than the average of all freight, such a reduction would result in a lowering of the average which in turn, would require a further reduction in the rates on the low-grade commodities, and this theory could be extended *ad infinitum*. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (231).

Brick being a low-grade product which enters into competition largely with concrete, there is a rate level beyond which it will not freely move, and that factor, although difficult of exact determination, should be given due weight in considering the effect on the carriers' revenues of increases or reductions in rates. *Id.* (238).

Limerock is a low-grade commodity, moves in open-top equipment, loads in excess of 50 tons per car on an average, and is not susceptible to loss or damage in transit. *Amalgamated Sugar Co. v. Director General, as Agent*, 328 (329).

LOW-GRADE COMMODITY—Continued.

Minimum charge of \$15 per car established by the director general and assessed on dry phosphate rock moving from Brewster, Fla., to Royster, Fla., during Federal control, found not unreasonable as compared with rates on other low-grade commodities within Florida for similar distances. *Royster Guano Co. v. Director General, as Agent*, 552.

LOWREY TARIFF.

Proposal to amend the so-called Lowrey tariff by excepting therefrom shipments of sand and gravel moving from points outside the Chicago switching district, found justified. *Sand and Gravel from Wolcottville*, 92.

Contention that the Illinois Central's pier track No. 1 in Chicago, Ill., should be listed in Lowrey's tariff as an industry track, under which line-haul carriers would then absorb the switching charge of the Illinois Central, *Held*: Point of delivery is an l. c. l. freight station which was opened to complainant's shipments as affording the only practicable point of delivery. Record affords no basis for listing this pier track as an industry track and switching charge thereto found not unreasonable. *Great Lakes Dredge & Dock Co. v. Director General, as Agent*, 274 (276).

MAINTENANCE EXPENSES.

Are made necessary by two factors, the action of the elements and the movement of traffic. In a year in which the movement is light, somewhat less maintenance is required than in years of heavy traffic, although it would be in the public interest if surplus from prosperous years were expended on maintenance in years of light traffic. *Reduced Rates, 1922*, 676 (691).

MAKE-UP AND BREAK-UP SERVICE.

The work of making and breaking up trains and the arrangement of cars in a train in station order are road and not switching services. *Reciprocal Switching at Kansas City*, 591 (600).

MANUFACTURER'S RATES. See NET RATES.**MARKETS. See GRAIN RATES.****MATURITIES.**

The meeting of bond maturities can not be considered an item of operating expense. *Marion & Eastern R. R. Co. v. C. & E. I. R. R. Co.*, 17 (19).

MEASURE OF RATE.

The commission would not be warranted in announcing any general rule for determining the reasonableness of rates exacted on shipments moving before or after June 25, 1918, on which date rates were increased by the director general, or any other date. In proceedings against the director general, as in all others, the commission must adhere to the sound and salutary principle that whether and to what extent a rate was or is unjust or unreasonable in a particular case is a question of fact, to be determined by the exercise of good judgment, informed by experience, in the light of all the pertinent facts of record. *Reparation as Relating to Increase of Rates*, 5.

The words "just and reasonable" imply the application of good judgment and fairness, of common sense and a sense of justice, to the facts of record, and are not fixed unalterable mathematical terms. Moreover, as has been recognized by the Supreme Court, 206 U. S., 1, 26, there must exist range for "the flexible limit of judgment which belongs to the power to fix rates," and there could be no flexible limit of judgment if all rates were to be measured by their relation to cost or by a predetermined rule. *Id.* (6).

MEASURE OF RATE—Continued.

Operating conditions prior to June 25, 1918, on which date rates were increased by the director general, including the retroactive application of the wage award of the Railroad Labor Board, were important factors, but they were not necessarily controlling in determining the reasonableness of rates after January 1 of that year. *Id.* (7).

Mere fact that the rate between two points is higher over one route than over others does not in itself establish that the higher rate is unreasonable. *Roxana Petroleum Co. v. Director General, as Agent*, 77 (80).

Shipper compared the rates on flint pebbles and flint brick with lower rates on other commodities primarily for the purpose of showing that the rates on such other commodities were accorded lower increases than flint pebbles and brick under General Order No. 28 of the director general. *Held*: Such comparisons alone are not conclusive that the higher rates are unreasonable. *Rock Products Traffic League v. B. & O. R. R. Co.*, 146 (148).

Fact that a lower rate was and is applicable between two points over a single line direct does not of itself prove that a higher rate for a two-line haul between the same points is unreasonable. *Magargee Bros. (Inc.) v. D. & H. Co.*, 203.

In passing upon the reasonableness of group rates, distances and ton-mile earnings between selected points can not be regarded as controlling. The reasonableness of such rates must be judged by average conditions. *Riverside Coal Co. v. Director General, as Agent*, 205 (209).

While the commission has repeatedly refused to sanction different rates on the same commodity based upon the use to which the article is put, it may be observed that the widespread use of a certain kind of brick for a given purpose is a circumstance of evidentiary value to be considered along with other facts in determining the proper description to be applied. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (221).

The impossibility of determining the exact relationship which the rates on any specific commodity bear to all freight is obvious. Even if exact statistics were available, so that the relationship of "all freight" and a specific commodity could be definitely determined it would be necessary to take into consideration the fact that all freight is a grand mixture of commodities, including products of agriculture, animals, mines, forests, manufactures, and miscellaneous commodities. *Id.* (230).

Impracticability of using the revenue on all freight as an exact yardstick by which to measure the rates on a particular commodity, even though it be low-grade traffic, illustrated. *Id.* (230-231).

In a proceeding dealing with a whole rate structure, too much weight should not be given to terminal costs based on tests at comparatively few points and for short periods. *Id.* (232).

Brick being a low-grade product which enters into competition largely with concrete, there is a rate level beyond which it will not freely move, and that factor, although difficult of exact determination, should be given due weight in considering the effect on the carriers' revenues of increases or reductions in rates. *Id.* (238).

Fact that a lower rate was applicable for similar or greater distances between points in the same general territory via route other than routes of movement does not in itself warrant a finding that the higher rate was unreasonable. *Great Lakes Dredge & Dock Co. v. Director General, as Agent*, 274 (276).

MEASURE OF RATE—Continued.

Neither the subsequent voluntary reduction of a rate nor the percentage of increase effectuated by General Order No. 28 of the director general alone are controlling factors in determining the reasonableness of rates. *Gilpin, Langdon & Co. v. Director General, as Agent*, 292 (293).

Where only individual rates are assailed, the fact that in the past carriers' operations have been profitable is not of controlling importance in determining the reasonableness of rates. *Brundred Bros. v. Prairie Pipe Line Co.*, 458 (460).

A particular element of classification, if considered alone, might appear to warrant a higher or lower rating on an article than would be justified if all proper elements are taken into consideration. *Traffic Bureau of Nashville v. L. & N. R. R. Co.*, 623 (626).

Allegation of unreasonableness based upon the existence during period of movement of a lower rate via routes other than route of movement, and its subsequent establishment over routes shipments moved, not sustained. A rate over a particular route is not presumed to be unreasonable merely because a lower rate applies over other routes. *Salem Glass Works v. Director General, as Agent*, 643 (644).

Contention that if relief sought is granted it will result in complaints seeking similar relief from points other than here under consideration and the ultimate disruption of the entire rate adjustment, *Held*: Argument not a convincing factor in determining whether rates under attack are unjust, unreasonable, or otherwise unlawful. *Willapa Lumber Co. v. Director General, as Agent*, 659 (664).

MILEAGE RATES. See **DISTANCE RATES.**

MILK AND CREAM RATES.

Any-quantity distance rates of 40 cents, charged on cream from Concordia, Kans., to Crete, Nebr., found unreasonable to extent it exceeded proportional rate of 25 cents on single consignments of not less than 200 cans, subsequently established. Reparation awarded. *Fairmont Creamery Co. v. C., B. & Q. R. R. Co.*, 319.

MILLING IN TRANSIT. See **TRANSIT ARRANGEMENTS.**

MINIMUM CHARGE.

Minimum charges on l. c. l. shipments, under General Order No. 28 of the director general, subsequently readjusted by application of reductions, found not unreasonable. Failure of carriers to strictly observe the terms of that order, filed with the commission by the President through his duly appointed agent, does not establish unreasonableness. *Swift & Co. v. Director General, as Agent*, 287.

Minimum charges on l. c. l. shipments, under General Order No. 28 of the director general, added to each factor of combination rates and subsequently readjusted by application of such minimum charge but once to the through rate, found not unreasonable. *Id.* (290-291).

Minimum charge of \$15 per car, established by the director general and assessed on dry phosphate rock moving from Brewster, Fla., to Royster, Fla., during Federal control, found not unreasonable as compared with rates on other low-grade commodities within Florida for similar distances. *Royster Guano Co. v. Director General, as Agent*, 552.

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MINIMUM CLASS SCALE.

Rate on scrap iron from Silvis to Moline, Ill., during Federal control, increased under the minimum class scale prescribed in General Order No. 28 of the director general, found unreasonable to extent it exceeded lower commodity rate subsequently established, which rate compares favorably with similar and lower rates between other points in the immediate vicinity of Silvis. Reparation awarded. *Standard Rail & Steel Co. v. C., R. I. & P. Ry. Co.*, 317.

MINIMUM WEIGHT:

In General: While minima should be high enough to insure a proper utilization of equipment, they should not exceed what can be reasonably and generally loaded. In fixing reasonable minima some leeway should be accorded for commercial conditions and the minima should not require the loading of all cars to their utmost capacity. *Lumber Carload Minima*, 98 (106).

Fruits and vegetables: Proposed cancellation of exception to classification in western trunk-line territory providing for third-class rating on mixed carloads of fresh fruits and vegetables, minimum 20,000 pounds, the effect of which would be to increase the c. l. minima, found not justified. *Cancellation of Rating on Fruits and Vegetables*, 401.

Hay: Carload minimum applicable on shipments of hay not shown to have been unreasonable. Record does not contain positive evidence that baling was done properly or that cars were loaded to full visible capacity. *Gaynor Bros. v. Director General, as Agent*, 541.

Lumber:

Upon further hearing, former report 56 I. C. C., 318, cubical-capacity carload minima on pine, fir, hemlock, larch, and spruce lumber, and articles taking the same group rates, in closed cars, from North Pacific coast and Inland Empire to eastern destinations, found unreasonable. Reasonable carload minima prescribed. *Lumber Carload Minima*, 98.

While minima should be high enough to insure a proper utilization of equipment, they should not exceed what can be reasonably and generally loaded. Shippers can not be expected in all cases to fit their lumber to the great variety of cars that may be furnished them, when there is practically no equipment designed especially for lumber traffic. In fixing reasonable minima some leeway should be accorded for commercial conditions and the minima should not require the loading of all cars to their utmost capacity. *Id.* (106).

Twine and sweepings, cotton: Based upon mathematical calculations of cars and containers used, charges on certain shipments of cotton twine and cotton-factory sweepings found to have been based on minimum weights which could not be loaded in cars furnished. Reparation awarded. *California Cotton Mills Co. v. Director General, as Agent*, 403.

MISBILLING.

The law prohibits misbilling, and carriers employ inspectors whose duty it is to see that the tariff regulations are complied with. *Nat'l. Asso. Waste Material Dealers v. A. A. R. R. Co.*, 748 (752).

MISROUTING.

No bills of lading were issued and shipments moved on mine manifests. Routing "Erie" requested by shipper found not to amount to an instruction to move the shipment via the Erie and Chicago & Erie, because both are part of the same system. The Chicago & Erie is a separate corporate entity filing its own reports and tariffs with the commission, and lower rate applied via the Erie and Pennsylvania. Shipment found misrouted. *Carney v. Director General, as Agent*, 199.

Where routing instructions given by shipper are incomplete, it is the carrier's duty to move the shipment over the cheapest reasonably available route, and where this is not done misrouting results. *Id.* (200).

Contractor's outfit moving during Federal control from Alice, Minn., through Duluth, Minn., to New Duluth, Minn., found to have been misrouted. Shipment should have moved over an intrastate route through Cloquet, Minn., at lower combination rate. Reparation awarded. *Jacobson Bros. v. N. P. Ry. Co.*, 201.

Contention that shipments delivered unrouted should have been forwarded via rail-water-and-rail routes at rates lower than those applied for the all-rail movement of the shipments. *Held*: If shipper desires his shipment to move via a water-and-rail route that is cheaper than the all-rail route, he must in delivering it to an initial carrier specify such routing, otherwise it is understood that the shipment is to move all-rail. *Conf. Ruling 190*. When the movement is all-rail, with certain exceptions, the initial carrier assumes the responsibility for the movement over the cheapest available route unless the consignor gives directions to the contrary. *Conf. Ruling 214 (c)*. *Schuhle's Pure Grape Juice Co. v. Director General, as Agent*, 485.

MISSISSIPPI RIVER CROSSINGS. *See RIVER CROSSINGS.*

MISTAKE. *See ERROR.*

MIXED CARLOADS.

Rates on scrap aluminum in mixed carloads with other scrap metals, including scrap brass, copper, and tin, found unreasonable to extent they exceeded the rates applicable on mixed carloads of scrap copper, brass, and tin. Measure of reasonable maximum rates prescribed. *Loewenthal Co. v. C. & N. W. Ry. Co.*, 115.

Fourth-class rates on automobile wooden floor, toe, and running boards, in mixed carloads, from Detroit, Mich., to Fort Worth, Tex., found unreasonable to extent that the rates on trimmed boards exceeded class A, and on untrimmed boards class B, prescribed in *Chevrolet Motor Co.*, 62 I. C. C., 175. Reparation awarded. *Chevrolet Motor Co. of Texas v. Director General, as Agent*, 325.

Proposed cancellation of exception to classification in western trunk-line territory providing for third-class rating on mixed carloads of fresh fruits and vegetables, minimum 20,000 pounds, the effect of which would be to increase the c. l. minima, found not justified. Cancellation of Rating on Fruits and Vegetables, 401.

NEGLIGENCE.

Tariff rule providing that only one change in destination would be permitted at the through rate, and that if subsequent change requested, shipment would be treated as a reshipment from point of reforwarding, found not unreasonable. Failure of carrier to promptly transmit instructions to disregard first diversion order, ample time intervening between dates when instructions received and complied with, resulted in charges in excess of those which would have accrued on basis of one diversion. Refund of overcharges directed. *Standard Oil Co. v. Director General, as Agent*, 143.

NET RAILWAY OPERATING INCOME. See **EARNINGS.**

NET RATES.

So-called net rates on hardwood logs, for manufacture and reshipment, from Proctor City, Wynnburg, Miston, and Lenox, Tenn., points on the Chicago, Memphis & Gulf, a branch line, to Bondurant, Ky., found not unreasonable or unduly prejudicial as compared with the distance scale of rates applicable from main-line points. Rates on like traffic from Menglewood, Tenn., to Bondurant, Ky., and from Miston, Tenn., to Trimble, Tenn., found unreasonable. Reasonable maximum rate from Miston to Trimble on interstate traffic prescribed and reparation awarded. *Smith v. I. C. R. R. Co.*, 427.

NEW YORK-CHICAGO RATES. See **CHICAGO-NEW YORK RATES.**

OHIO RIVER CROSSINGS. See **RIVER CROSSINGS.**

OPERATING CONDITIONS.

Prior to June 25, 1918, on which date rates were increased by the director general, including the retroactive application of the wage award of the Railroad Labor Board, were important factors, but they were not necessarily controlling in determining the reasonableness of rates after January 1 of that year. Reparation as Relating to Increase of Rates, 5 (7).

OPERATING EXPENSES.

The meeting of bond maturities can not be considered an item of operating expense. *Marion & Eastern R. R. Co. v. C. & E. I. R. R. Co.*, 17 (19).

One of the greatest problems confronting the carriers to-day is to provide efficient service at a reasonable cost. If the purpose of section 15a of the act to afford carriers a reasonable return is to be attained, earnest efforts toward reduction of operating expenses in all possible ways consistent with good service must be continued. *Reduced Rates*, 1922, 676 (690).

Coal, next to labor, is the largest single item of expense to the railroads. *Id.* (697).

The raising of the rate level by the director general under General Order No. 28, and again by the commission under *Increased Rates*, 1920, 58 I. C. C., 220, were necessitated by increases in operating expenses. The latter have now partially receded. The rate increases were general and justified by the increase in general cost of service, and with decrease in that cost a rate decrease, also general, is justified. *Id.* (734).

OPERATING RATIOS.

Are of value as showing trends in comparisons between carriers, but their use to show an alleged out-of-pocket cost can not be sustained. Such reasoning would prevent the reduction of any rate or division, no matter how extortionate or unreasonable, below that percentage of itself which is represented by the average operating ratio of the carrier involved. *Division of Joint Rates and Fares of M. & N. A. R. R. Co.*, 47 (52-53).

OPERATING RATIOS—Continued.

The use of operating ratios derived from all traffic for adjustment of a part of the traffic without consideration of that part of the business to which the adjustment is not to be applied leads to erroneous conclusions. *Id.* (57).

In a proceeding involving divisions, the commission must consider the respective needs of all the carriers involved, and it can not determine a case by weighing operating ratios alone. The law requires that other elements be taken into account. *Id.* (58).

OPPOSITE DIRECTION. See BOTH DIRECTIONS.

OUTBOUND RATES. See INBOUND AND OUTBOUND.

OUT OF LINE.

In computing distance upon which the divisions to be received by a common carrier short line are determined, the out-of-line or back-haul movement to track scales should not be included. Divisions Received by Brimstone R. R. & Canal Co., 375 (388).

OVERCHARGES.

Tariff rule providing that only one change in destination would be permitted at the through rate, and that if subsequent change were requested, shipment would be treated as a reshipment from point of reforwarding, found not unreasonable. Failure of carrier to promptly transmit instructions to disregard first diversion order, ample time intervening between dates when instructions received and complied with, resulted in charges in excess of those which would have accrued on basis of one diversion. Refund of overcharges directed. *Standard Oil Co. v. Director General, as Agent*, 143.

Where carriers, in publishing tariffs, failed to restrict the application of certain rates to tin or other metal caps, such rates found to be applicable to shipments of paper bottle-neck wrappers or caps. Refund of overcharges directed. *Los Angeles Ice & Cold Storage Co. v. Director General, as Agent*, 155.

Rates on tin cans from Cragin, Ill., to Stoughton, Wis., were the same as to Darwin, Wis., a farther distant point. Carriers erroneously applied the increase under *Increased Rates, 1920*, 58 I. C. C., 220, and accordingly reduced the rate to Darwin but not to Stoughton. Subsequently parity restored by establishment of a specific commodity rate to Stoughton. *Held*: Since Darwin rates were applicable to Stoughton, shipments were overcharged. Reparation awarded. *Wisconsin Dairy Products Co. v. C., M. & St. P. Ry. Co.*, 307.

Charges on two carloads of ice from Trevor, Wis., and Lake Marie (Antioch), Ill., for industrial delivery in Chicago, Ill., on the Illinois Northern Ry., based upon commodity rates of 3 and 4 cents per 100 pounds, respectively, found in excess of those legally applicable. Tariff provided that when charges exceeded \$15 per car, an arbitrary of \$3.50 for industrial delivery should be added, and from that amount \$6 per car will be absorbed, the remainder constituting the through rate to final destination. Refund of overcharges directed. *Carney v. Director General, as Agent*, 309.

OVERCHARGES—Continued.

Combination rate to and from Birmingham, Ala., assessed on shipments of pig iron moving as routed via the Birmingham Southern from North Birmingham, Ala., to New Orleans, La., found illegal. Tariff prohibited participation of that carrier as an intermediate carrier in a movement from specified stations to specified stations, but did not prohibit it from participating in a movement from one of those points *through* another of those points to a destination not named therein. Birmingham group rate found legally applicable and reparation awarded. *Tutwiler & Brooks v. S. Ry. Co.*, 311.

Commodity rates were prepaid on alcohol of an "actual value not exceeding \$2.50 per gallon." Subsequently on the ground that actual value exceeded \$2.50 charges were corrected to the basis of class rates applicable on alcohol without limitation as to value. *Held*: Limitations attached to commodity rates were unlawful and void under the Cummins amendment, but such commodity rates were lawful and applicable as to these shipments, as commodity rates take preference over class rates and specific commodity rates take preference over general commodity rates. Shipments found overcharged and refund directed. *U. S. Industrial Alcohol Co. v. Director General*, 389.

Rate on wheat from Sikeston and Benton, Mo., to Atlanta, Ga., constructed by addition of certain differentials to the rates from Cairo, Ill. Carriers under General Order No. 28 of the director general increased both the rates from Cairo to Atlanta, and the "bases for rates * * * to be used in arriving at rates" from and to points under consideration. *Held*: Tariff plainly increased rates from Cairo to Atlanta, but since it did not operate to increase the "bases" for constructing rates from Sikeston and Benton, shipments found overcharged and reparation awarded. *Charleston Milling Co. v. Director General, as Agent*, 525.

Following *U. S. Industrial Alcohol Co.*, 68 I. C. C., 389, shipments of soap found to have been overcharged. Rates were made dependent upon declarations of value made by shippers but not authorized by the commission under the second Cummins amendment, and, while void, when stripped of the void limitation, were valid and applicable. Reparation awarded. *Swift & Co. v. Director General, as Agent*, 537.

Missouri Pacific tariff concurred in by Missouri & North Arkansas R. R., provided for the application from transit point of the balance of the joint through rate from original point of shipment to final destination when shipments move outbound from transit point *over this line*. *Held*: Phrase "over this line" has reference to rails of Missouri Pacific and on shipments which moved into transit point via the Missouri & North Arkansas and outbound over the Missouri Pacific the transit rates were applicable. Shipments found overcharged and reparation awarded. *Lee Pendergrass Cotton Co. v. Director General, as Agent*, 637 (641).

Combination rates charged on k. d. poultry crates from Dyer, Tenn., to Cincinnati, Ohio. Lower combination applicable under authority of rule 5-b of Tariff Circular 18-A. Refund of overcharges directed. *Day & Co. v. Director General, as Agent*, 656.

PACKING. See also CONTAINERS.

Charges on that portion of a carload of steel bed parts, shipped loose, which were 50 per cent higher than when crated or boxed, found not unreasonable. *Murphy Mfg. Co. v. O.-W. R. R. & Nav. Co.*, 211.

PANAMA CANAL.

Proposed proportional rates, representing reductions, from Chicago, Ill., and related points to South Atlantic and Gulf ports for application on traffic destined to the Pacific coast by steamship lines operating through the Panama Canal, the primary purpose of which is to put the South Atlantic and Gulf ports on a parity with New York, N. Y., on traffic destined to the Pacific coast and to thus afford the southern lines an opportunity to secure some of the traffic now moving all rail or through North Atlantic ports by rail and water, found justified. Rates from Chicago via Panama Canal, 74.

PARITY OF RATES. See **EQUALIZING RATES.**

PARTIES.

The charging of an unreasonable rate is a tort and the parties to such a rate are jointly and severally liable for any resulting damage. *Bloedel-Donovan Lumber Co. v. Director General, as Agent*, 95 (96).

Reparation awarded against defendant carriers which engaged in the transportation within the United States for the exaction of an unreasonable rate on shipments moving from points in Canada to points in the United States. *Id.* (97).

Where complaint filed by a partnership and since shipments moved such partnership dissolved, one partner acquiring the interest of the other, lawful successor in interest is party entitled to reparation. *Wagner & Steiner v. Director General, as Agent*, 138 (140).

Complaint filed by a public traffic manager named himself as complainant. Shipments made, and charges were paid, by another party. No one having knowledge of the facts as to payment of transportation charges appeared at the hearing. *Held*: Reparation denied for lack of proof. *Carney v. Director General, as Agent*, 199 (200).

Fact that shipper included freight charges in part in the selling price of the commodity shipped does not preclude it from recovering damages suffered by reason of having ultimately paid an unreasonable freight rate; nor is the right to recovery affected by the further fact that the Government happened to be both the purchaser and the carrier of the shipments in question. *Central Wisconsin Supply Co. v. Director General, as Agent*, 409 (411).

Following *Seaboard Air Line Ry. v. U. S.*, decided June 6, 1921, the transfer of a claim for reparation from a copartnership to a corporation, found not within the inhibition of section 3477 of the United States Revised Statutes, forbidding assignments of claims against the United States. *Fairmont Creamery Co. v. Director General, as Agent*, 507 (515-516).

Upon supplemental report, unreasonable freight charges paid on nitrate of soda from Baltimore, Md., to Barksdale, Wis., found not borne by complainant, and reparation denied. Original report, 59 I. C. C., 570 modified. *Du Pont de Nemours & Co. v. Director General, as Agent*, 579.

PARTY RATES.

Rules and regulations providing for the free transportation of one special baggage car containing paraphernalia, if the persons traveling on the same train with it number 25 or more, and applicable to Chautauqua outfits moving from Chicago, Ill., to the Pacific coast and return, found not unreasonable or unduly prejudicial. Complainants' inability to avail themselves of the rule is due to the complete change of program at each point daily, while theatrical companies which take advantage of the rule have a weekly change and move their personnel en masse. *Ellison-White Chautauqua System v. Director General, as Agent*, 492.

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PARTY RATES—Continued.

The commission has no authority to require carriers to establish for particular passengers or particular occasions special fares lower than the regular fares. *Reduced Rates*, 1922, 676 (729).

PASSENGER FARES.

The commission has no authority to require carriers to establish for particular passengers or particular occasions, special fares lower than the regular fares. *Reduced Rates*, 1922, 676 (729).

PEORIA & PEKIN UNION RAILWAY COMPANY.

Found to be an independent common carrier subject to the act and as such is entitled to just and reasonable compensation for the services which it renders. *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, 412 (417).

PER CAR RATES. See also MINIMUM CHARGE.

Director general canceled the "per car" rates on live stock and established rates in cents per 100 pounds. After termination of Federal control carriers restored the "per car" basis. *Held*: While transportation characteristics of live stock are different from those on lumber and grain, the earnings per car and per car mile on the latter were substantially higher than those on live stock, which comparison tends to show that the charges assessed during the interim were not unreasonably high. *Carstens Packing Co. v. Director General, as Agent*, 125.

PERCENTAGE RATES.

Rate on stock cattle found unreasonable to extent it exceeded 75 per cent of the beef cattle rate. Waiver of undercharges authorized. *Healy & Co. v. Director General, as Agent*, 45.

Under the general readjustment of rates herein prescribed on articles in the uniform brick list, rates between Chicago, Ill., and New York, N. Y., and from percentage groups west of the Pittsburgh group to New York found unreasonable. Reasonable maximum base rate and percentages thereof prescribed. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (246).

For distances not in excess of 150 miles, interstate rates on common brick, when loaded at random to the marked capacity of the car without protection against chipping or breaking, found unjust and unreasonable to extent that they exceed 80 per cent of the rates on articles in the uniform brick list. *Id.* (252).

PERMITS.

Lines serving final destinations, against which embargoes were in force, issued permits for diversion or reconsignment of certain shipments to such points. Carriers did not exercise their rights under the tariff to refuse to accept orders, but diverted or reconsigned shipments upon complainant's written instructions without requiring new bills of lading. *Held*: Combination rates to and from diversion or reconsignment points assessed found illegal to extent they exceeded through rates plus diversion, reconsignment, or other special charges. Reparation awarded. *Frick-Reid Supply Co. v. Director General, as Agent*, 151.

PICK-UP AND DELIVERY SERVICE.

Refusal of American Ry. Express Co. to extend its free collection and delivery service in Springfield, Mass., so as to include that section known as East Springfield, while affording such service to the so-called Park and Franconia sections, found not unjustly discriminatory. Traffic is not "like" within the meaning of that word as used in section 2 of the act; and the free collection and delivery service is not performed "under substantially similar circumstances and conditions." *East Springfield Citizens' Club v. American Ry. Exp. Co.*, 482.

PIPE LINES.

Rates for the transportation of crude oil by pipe lines from wells in Kansas, Oklahoma, and Texas to Franklin and Lacy Station, Pa., established since the act declaring pipe lines to be common carriers was held valid in *The Pipe Line cases*, 234 U. S., 548, and subsequently increased 25 per cent, found not unreasonable for the service performed. *Brundred Bros. v. P. P. L. Co.*, 458.

Rule requiring shipments of crude oil for transportation by pipe line to be tendered in quantities of not less than 100,000 barrels found unreasonable to extent that it requires tenders in excess of 10,000 barrels. Minimum fixed by carriers reserves the pipe lines to a few large shippers and essentially deprives the lines of the common carrier status with which they were impressed by the act. Minimum herein fixed would be sufficiently low to enable all producers and refiners to utilize the pipe lines and would be sufficiently high to mitigate operating difficulties. *Id.* (458).

A pipe line usually receives its greatest gallonage from any district when first laid, the supply of oil thereafter gradually diminishing until exhausted. This is in contrast with rail transportation, where the tonnage usually increases as time elapses. A pipe line may, at great outlay of money, extend its pipes into a new field that has the brightest prospects only to have the venture prove a disappointing failure. *Id.* (461).

It is not one of the common-carrier functions of pipe lines to protect the unwary from the irresponsible or unscrupulous, and where such protection is afforded through a rule which deprives legitimate shippers of the privilege of using their facilities, the rule can not be sanctioned. *Id.* (465).

The transportation of oil by pipe line is essentially a bulk business, and that fact must not be lost sight of in determining the minimum which will be accepted for transportation. The pipe lines can not be successfully operated on a dribble basis and there is a reasonable minimum below which they should not be required to accept oil for transportation; but the minimum must be reasonable. *Id.* (466).

PLACEMENT. See **DELIVERY**; **SPOTTING CARS**.

PLANT FACILITY.

Delaware River & Union R. R. Co., found not to be a common carrier subject to the act, but under the test laid down in the *Tap Line cases*, 234 U. S., 1, 24, found to be a plant facility. *Sun Co. v. Director General, as Agent*, 11 (14).

PLEADING AND PRACTICE.

Complaints assailed certain rates as unjust, unreasonable, unlawful, discriminatory, unduly preferential, and unduly prejudicial in violation of certain State laws, but did not allege a violation of any acts administered by the commission. *Held*: Complaints found to fairly present violations of Federal laws which the commission has jurisdiction to administer and further allegations that the rates were in violation of certain State laws may be treated as surplusage. *Wasatch Coal Co. v. Director General, as Agent*, 118.

The commission must look to the substance of a complaint rather than to its form. One of the essential elements of a complaint is allegation of a violation of a law which the commission has jurisdiction to administer. *Id.* (120).

Petition in intervention tendered at the hearing in support of a complaint alleging unreasonableness and undue prejudice, attempted to put in issue rates from points not specifically set forth in the complaint. *Held*: To extent that petition thus broadens the issue it can not be considered. *Swift & Co. v. A., T. & S. F. Ry. Co.*, 157.

PORT-TO-PORT RATES.

Class rate on cotton yarns from New Bedford Wharf, Mass., to Pier 40, North River, New York, N. Y., by water, during Federal control found unreasonable and unduly prejudicial to extent it exceeded lower commodity rate contemporaneously maintained on cotton piece goods, which lower rate was subsequently made applicable to cotton yarns. Reparation awarded. *New Bedford Board of Commerce v. Director General, as Agent*, 85.

Port-to-port rates were filed with the Shipping Board but not with the commission. Water line formed part of a combined rail-and-water system of transportation taken into Federal control by proclamation of the President, and thus came under the provisions of the Federal control act, and was under Federal control and operation during the period of movement. *Held*: Charges were collected "by or through the President" as contemplated by section 206 (c) of the transportation act, 1920, and are within the commission's jurisdiction. *Id.* (85-86).

POSTING. *See* FILING AND POSTING.

POWER OF COMMISSION. *See* JURISDICTION.

PREFERENCES AND PREJUDICES. *See also* DISCRIMINATION.

In General: The act provides for prevention as well as for cure. Undue prejudice and preference may be brought about as readily by reducing one as by increasing the other of two related rates. *Sublimed Lead to Trunk Line Points*, 343 (345).

Articles:

Chautauqua outfits: Rules and regulations providing for the free transportation of one special baggage car containing paraphernalia, if the persons traveling on the same train with it number 25 or more, and applicable to Chautauqua outfits moving from Chicago, Ill., to the Pacific coast and return, found not unreasonable or unduly prejudicial. Complainant's inability to avail themselves of the rule is due to the complete change of program at each point daily, while theatrical companies which take advantage of the rule have a weekly change and move their personnel en masse. *Ellison-White Chautauqua System v. Director General, as Agent*, 492.

PREFERENCES AND PREJUDICES—Continued.**Articles—Continued.**

Oil, gas: Rates on, found unreasonable and unduly prejudicial to extent they exceeded rates 5 cents less than on gasoline and other refined oils. Reasonable and nonprejudicial relationship prescribed and reparation awarded. *Keokuk Electric Co. v. Director General, as Agent*, 517.

Yarns, cotton: Class rate on, found unreasonable and unduly prejudicial to extent it exceeded lower commodity rate contemporaneously maintained on cotton piece goods, which lower rate was subsequently made applicable to cotton yarns. Reparation awarded. *New Bedford Board of Commerce v. Director General, as Agent*, 85.

Branch Line Points: So-called net rates on hardwood logs, for manufacture and reshipment, from Proctor City, Wynnburg, Miston, and Lenox, Tenn., points on the Chicago, Memphis & Gulf, a branch line, to Bondurant, Ky., found not unreasonable or unduly prejudicial as compared with the distance scale of rates applicable from main-line points. *Smith v. I. C. R. R. Co.*, 427.

Car Distribution:

Practices of the Pennsylvania and the Pittsburgh & Lake Erie railroads, during period of labor troubles and abnormal conditions following Federal control, in the distribution of coal cars to mines on the Monongahela and Morgantown & Wheeling railways, found not to have been unreasonable under the circumstances and conditions existing, and while discrimination did exist it was not such as to constitute undue prejudice in favor of mines on the Pennsylvania and Pittsburgh & Lake Erie. *Northern West Virginia Coal Operators' Asso. v. P. & L. E. R. R. Co.*, 167.

Distribution of empty cars to complainant for shipment of hay found not unduly prejudicial as compared with the distribution to other shippers at Forestburg and Woonsocket, S. Dak. Complainants, foreseeing an unusual demand for hay, began purchasing in large quantities, and carriers could not have been expected to take care of their sudden and increasing demands for cars immediately and fully to the exclusion of other shippers. To have done so might have subjected them to a charge of undue preference. *Gaynor Bros. v. Director General, as Agent*, 541.

Interchange Switching: Switching charges of Peoria & Pekin Union Ry. Co., effective between its rails and the rails of the Minneapolis & St. Louis R. R. Co., and proposed between the rails of the Peoria Ry. Term. Co. at Peoria, Ill., and the tracks of the Pekin Union at Peoria and East Peoria, Ill., found unjustly discriminatory and unduly prejudicial. The Pekin Union performs interchange service between the rails of its tenants and the C., B. & Q. and C., R. I. & P. without compensation except such as it receives under contracts with its tenant lines. *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, 412.

Localities:

Alabama and western Kentucky mines: Proposed reduced rates on bituminous coal from mines on the Missouri Pacific R. R. in southern Illinois to destinations in Arkansas, Louisiana, and Texas, for the purpose of increasing the volume of movement from such southern Illinois mines, and which are no higher than those now in effect from competing mines, found not unjustly discriminatory or unduly prejudicial. Coal from Illinois to Arkansas, Louisiana and Texas, 1.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Birmingham, Ala.:

Upon complaint that the class and commodity rates from Memphis, Tenn., to, are unreasonable and unduly prejudicial as compared with corresponding rates from Memphis to Nashville and Chattanooga, Tenn., and Atlanta, Ga., *Held*: Commodity rates were not and are not unreasonable, but class rates are and for the future will be unreasonable and unduly prejudicial to extent they exceed the contemporaneous rates in the reverse direction. *Birmingham Traffic Bureau v. St. L.-S. F. Ry. Co.*, 108.

Rates on import or interstate shipments of blackstrap molasses, in tank-car loads, from New Orleans, La., and Mobile, Ala., to, found unreasonable and unduly prejudicial to Birmingham in favor of Nashville, Tenn. Reasonable and nonprejudicial rates prescribed and reparation awarded. *Western Grain Co. v. Director General, as Agent*, 335.

Burlington, Iowa: Rates on furniture from North Carolina and Virginia points to, found not unreasonable or unjustly discriminatory, but found unduly prejudicial to Burlington and unduly preferential of Des Moines, Iowa, and Missouri River cities to extent they exceed 15 cents less than the rates to Des Moines and 18.5 cents less than the rates to Omaha, Nebr., and other points taking Missouri River cities' rates. Reparation denied. *Chittenden & Eastman Co. v. Director General, as Agent*, 267.

Dinwiddie, Ind.: Rate applicable on hay from, to Memphis, Tenn., found unreasonable and unduly prejudicial to extent it exceeded the rate from Lowell, Ind., a competing point. Measure of reasonable maximum rate prescribed and reparation awarded. *Farmers Elevator Co. v. C., I. & L. Ry. Co.*, 159.

Eastern points: Proposed reduced rates on sublimed lead and certain other pigments from central territory to eastern points, without corresponding reductions in westbound rates on the same commodities and without corresponding reductions from points east of the Buffalo-Pittsburgh line to eastern destinations, which would result in undue prejudice to manufacturers east of that line and in undue preference of manufacturers in central territory, found not justified. *Sublimed Lead to Trunk Line Points*, 343.

Harvard, Ill.: Failure of carriers to absorb interchange switching charges at Harvard, Ill., found not unreasonable, discriminatory, or unduly prejudicial. Carriers absorb no switching charges at Harvard, and in view of the dissimilarity of conditions between that point and at Aurora, Sterling, and Freeport, Ill., and Janesville, Wis., where competitors are located and where under reciprocal arrangements carriers absorb the switching charges of connecting lines, the different practices are not shown to result in undue prejudice. *Hunt, Helm, Ferris & Co. v. C. & N. W. Ry. Co.*, 283.

Keokuk, Iowa: Rates on gas oil from points in Kansas, Missouri, Oklahoma, and Arkansas, to, found unreasonable and unduly prejudicial to extent they exceeded the rates to St. Louis, Mo., from certain points of origin, and a 1 cent differential over St. Louis from other points. Reasonable and nonprejudicial relationship prescribed and reparation awarded. *Keokuk Electric Co. v. Director General, as Agent*, 517.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Lucaston, N. J.: Rates on talc from Hailesboro, Emeryville, and Talcville, N. Y., to, based on a differential over the rates to Philadelphia, Pa., and points taking the same rates, found not unreasonable, discriminatory, or unduly prejudicial. *Lucas & Co. v. Director General*, as Agent, 581.

Mason City, Iowa: Rates on fresh meats and packing-house products, in straight or mixed carloads, from, to Minneapolis, Minn., found not unduly prejudicial, but rate on packing-house products from Mason City to Duluth, Minn., found unduly prejudicial to extent that it exceeds the rate from Chicago, Ill., and Milwaukee and Cudahy, Wis., to the same destination, and to extent it exceeds the rate from St. Paul, Minn., by more than 15 cents. Reparation denied. *Decker & Sons v. Director General*, as Agent, 34.

Nashville, Tenn.: Distance rates, state and interstate, during Federal control, and present interstate rates on logs from stations on the N., C. & St. L. and Tennessee Central railroads, to, found not unreasonable or unduly prejudicial as compared with rates between other points on those lines. *Farris Hardwood Lumber Co. v. Director General*, as Agent, 181.

Natchez, Miss.: Rates on horses and mules from Texas points to, found unreasonable and unduly prejudicial to extent they exceeded for distances of 750 miles or less the rates for like distances applicable under the distance scale prescribed from Texas points to Shreveport, La., in the *Shreveport case*, 48 I. C. C., 312, 351, and for distances greater than 750 miles to extent they exceeded rates prescribed in that case from the same points to Shreveport by more than 6 cents per 100 pounds. *Cocke Live Stock Co. v. B., S. L. & W. Ry. Co.*, 130.

Newark, N. J.: Class rates on petroleum lubricating oil and grease from, to Charlotte, N. C., and Atlanta, Ga., found unreasonable and unduly prejudicial to extent they exceeded lower commodity rates applicable from Jersey City, N. J., and other New York rate points. Lower rate, published subject to rule 77 of Tariff Circular 18-A, was subsequently established from Newark, a point directly intermediate between Jersey City and points of destination. Reparation awarded. *New York & New Jersey Lubricant Co. v. Director General*, as Agent, 477.

St. Louis, Mo.: Rates on new empty slack and tight wooden barrels and kegs from, to Evansville, Ind., Louisville, Ky., and Cincinnati, Ohio, found not unreasonable, discriminatory, or unduly prejudicial in comparison with rates on like traffic from Memphis, Tenn., and between other points for comparable distances. Complainants' disadvantage is due to their geographical location rather than to the freight rates and for the past six years there have been no new barrels or kegs shipped from Memphis to the destinations named. *Pioneer Cooperage Co. v. B. & O. R. R. Co.*, 645.

Sand Springs, Okla.: Rates on soda ash from Hutchinson, Kans., to, found not unreasonable or unduly prejudicial as compared with rates on like traffic for comparable or greater distances in western territory. *Kerr & Co. v. Director General*, as Agent, 653.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Wabash Valley group: Proposal of the C. & E. I. Ry. to reduce the interstate rates on brick, and articles taking same rates, from Danville, Ill., in the Wabash Valley group, to East St. Louis, Ill., for purpose of placing East St. Louis on the same basis as Granite City, and to meet the rates in effect over the Wabash, found not justified. Failure to treat the Wabash Valley group as one group in all directions on long-haul traffic was condemned in *National Paving Brick Mfrs. Asso.*, 68 I. C. C., 213, 242, and undue prejudice already existing would be increased unless corresponding reductions were made from other points in the group. Brick, Clay, and Clay Products, 455.

Willapa Harbor points, Wash.: Rates on lumber and forest products from points in western Washington on the Willapa Harbor branches of the Northern Pacific and C., M. & St. P. railways to destinations in Idaho, Utah, and Colorado, to extent they exceed joint rates on the coast group basis from points on the Southern Pacific, and Spokane, Portland & Seattle railways, south and west of Portland, Oreg., found unjust, unreasonable, and unduly prejudicial. Measure of reasonable maximum rates prescribed. *Willapa Lumber Co. v. Director General, as Agent*, 659.

Spotting Cars:

Failure of defendants to perform, or to make an allowance for the service of spotting cars at points of loading and unloading within complainant's plant at Marcus Hook, Pa., within the Philadelphia, Pa., rate district, while performing such service for competitors in the same rate district without charge in addition to the district rates, found not to have been unreasonable, discriminatory, or unduly prejudicial. No request has ever been made by complainant upon the trunk line carriers to perform a general spotting service at its plant. *Sun Co. v. Director General, as Agent*, 11.

Refusal of carriers to increase per car allowance for spotting service performed by complainant within its plant at Sharon, Pa., found not to result in unreasonable rates or to subject complainant to undue prejudice or unjust discrimination. Record fails to show extent to which allowance is less than would be just and reasonable, or extent to which it falls short of reimbursing complainant for the cost of performing services substantially like those performed by carriers for competitors without charge. *Stewart Furnace Co. v. P. R. R. Co.*, 528.

If carriers continue to do spotting for a shipper's competitors at the convenience of their industries, such shipper is entitled to like accommodation, and any unjust discrimination or undue prejudice which may exist might be removed by according shipper the same spotting service as carriers perform for its competitors. Shipper's refusal to permit carriers to perform such service would absolve them from the obligation to do so. *Id.* (530).

The failure or refusal of carriers to perform spotting service for a shipper or to reimburse it for the cost thereof, while performing a like service without charge for others similarly situated, is unduly prejudicial to such shipper and unduly preferential of its competitors. *Id.* (533).

PREFERENCES AND PREJUDICES—Continued.**State and Interstate:**

In original report, 60 I. C. C., 421, it was found that the failure of carriers to increase their rates for intrastate traffic within Texas to correspond to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220, resulted in undue preference of persons and localities in intrastate commerce; in undue prejudice to persons and localities in interstate commerce; and in unjust discrimination against interstate commerce. Upon further hearing, order modified so as to exclude from its provisions the rates on refined sugar from Sugarland, Tex., to Texas common points. *Intrastate Rates within the State of Texas*, 25.

Intrastate rates on articles in the uniform brick list from Danville, Ill., to Chicago, Ill., to extent that they are lower than the interstate rates contemporaneously maintained from Danville, Ill., and Attica, Ind., to Chicago, found unduly prejudicial to Attica and shippers in interstate commerce from Danville and Attica, unduly preferential of intrastate shippers from Danville, and unjustly discriminatory against interstate commerce. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (241).

PRIVATE TRACK.

Collection of a trackage charge by the Chicago, Ottawa & Peoria Ry. Co., for the use of a portion of its track at Marseilles, Ill., operated as a private switch track, found not unlawful. The amount of consideration paid for the use of this track is a matter of private contract over which the commission has no jurisdiction. *Certain-Teed Products Corp. v. C., R. I. & P. Ry. Co.*, 260.

There is no duty on the part of common carriers subject to the act to provide tracks off their lands to effect connection with an industry. If an industry desires connection with a trunk line, the duty devolves upon it to make arrangements for the procuring of a spur. *Id.* (263).

Paragraph 9 of section 1 of the act makes it the duty of a common carrier under stated circumstances to construct, maintain, and operate, upon reasonable terms, switch connections with private sidetracks which may be constructed to connect with its rails by shippers tendering interstate commerce. But this duty does not arise until the shipper has provided the sidetrack. *Id.* (263).

PROFIT.

Where only individual rates are assailed, the fact that in the past carriers' operations have been profitable is not of controlling importance in determining the reasonableness of rates. *Brundred Bros. v. Prairie Pipe Line Co.*, 458 (460).

PROHIBITIVE RATES.

The Chicago-New York rate on which articles in the uniform brick list from points west of the Pittsburgh group are based, has by reason of successive general increases, become too high to permit the free movement of this desirable heavy-loading traffic between central and trunk-line territories, a situation which detracts from, rather than adds to, the revenues of the carriers. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (245-246).

PROOF. See also BURDEN OF PROOF.

Complaint filed by a public traffic manager named himself as complainant. Shipments made, and charges were paid, by another party. No one having knowledge of the facts as to payment of transportation charges appeared at the hearing. *Held*: Reparation denied for lack of proof. *Carney v. Director General, as Agent*, 199 (200).

Carload minimum applicable on shipments of hay not shown to have been unreasonable. Record does not contain positive evidence that baling was done properly or that cars were loaded to full visible capacity. *Gaynor Bros. v. Director General, as Agent*, 541.

PROPORTIONAL RATES. See also FACTOR.

Proposed proportional rates, representing reductions, from Chicago, Ill., and related points to South Atlantic and Gulf ports for application on traffic destined to the Pacific coast by steamship lines operating through the Panama Canal, the primary purpose of which is to put the South Atlantic and Gulf ports on a parity with New York, N. Y., on traffic destined to the Pacific coast and to thus afford the southern lines an opportunity to secure some of the traffic now moving all rail or through North Atlantic ports by rail and water, found justified. Rates from Chicago via Panama Canal, 74.

Proposed reduced proportional rate on petroleum and its products from Shreveport, La., group to Baton Rouge, La., and Natchez and Vicksburg, Miss., found justified for application on shipments to certain States in southeastern territory. *Petroleum and Its Products from Shreveport*, 564.

Proposed reduced proportional rates on grain and grain products, applicable all-rail, rail-lake-and-rail, and rail-lake-and-canal, from Minneapolis, Minn., and other points in the Northwest to points in trunk-line territory and New England, found not justified. *Grain Rates from Minnesota and Wisconsin*, 665.

PROSECUTIONS.

Where value stated in bills of lading is declared by shippers such declarations of value do not directly limit carriers' liability. If goods are lost or damaged in transit and shippers make claims based on values in excess of that declared, they are subject to prosecution under section 10 of the act. Thus carriers' liability is indirectly, but effectively, limited by these necessary declarations of value, and such limitations as to value attached to rates are unlawful and void. *U. S. Industrial Alcohol Co. v. Director General*, 389 (391-392).

PROTECTIVE SERVICE.

Heater transit charges on potatoes shipped in Eastman cars from Aroostook County, Me., to Boston, Mass., New York, N. Y., Philadelphia, Pa., and certain group destinations, found not unreasonable. There is a substantial disparity between the heater transit rates and service here assailed and those maintained in western trunk line and northwestern territories. Since 1917 Eastman cars have been operated at a loss and during 1920-21, when rates here assailed were exacted, such cars did not earn a sufficient amount to allow for interest upon investment. *American Fruit & Vegetable Assn. v. B. & A. R. R. Co.*, 446.

PUBLICATION.

Transit charges should be published as a joint charge, either in the tariff naming the joint through rates or in a joint transit tariff specifically referred to in the tariff naming the joint through rates, and should be collected by the carrier that can do so with the greater efficiency and convenience, and divided in proportion to the expenses incurred by each line. *Illinois Central R. R. Co. v. N. O. G. N. R. R. Co.*, 505.

PUBLIC CONVENIENCE AND NECESSITY. *See* **CONVENIENCE AND NECESSITY.**

PURPOSE OF ACT. *See* **CONSTRUCTION OF STATUTE.**

RAIL-AND-WATER. *See also* **RAIL-LAKE-AND-RAIL.**

Proposed proportional rates, representing reductions, from Chicago, Ill., and related points to South Atlantic and Gulf ports for application on traffic destined to the Pacific coast by steamship lines operating through the Panama Canal, the primary purpose of which is to put the South Atlantic and Gulf ports on a parity with New York, N. Y., on traffic destined to the Pacific coast and to thus afford the southern lines an opportunity to secure some of the traffic now moving all rail or through North Atlantic ports by rail and water, found justified. Rates from Chicago via Panama Canal, 74.

RAIL-LAKE-AND-RAIL.

Proposed reduced proportional rates on grain and grain products, applicable all-rail, rail-lake-and-rail, and rail-lake-and-canal, from Minneapolis, Minn., and other points in the Northwest to points in trunk-line territory and New England, found not justified. Grain Rates from Minnesota and Wisconsin, 665.

RAIL-WATER-AND-RAIL.

Joint sixth-class rate which included marine insurance applicable on alum moving rail-water-and-rail from Chattanooga, Tenn., to Lodi, N. J., found unreasonable to extent it exceeded lower commodity rate plus marine insurance charges, subsequently established. Reparation awarded. *Kalbfleisch Corp. v. C. of G. Ry. Co.*, 333.

Contention that shipments delivered unrouted should have been forwarded via rail-water-and-rail routes at rates lower than those applied for the all-rail movement of the shipments. *Held*: If a shipper desires his shipment to move via a water-and-rail route that is cheaper than the all-rail route, he must in delivering it to an initial carrier specify such routing, otherwise it is understood that the shipment is to move via all-rail. *Conf. Ruling 190*. When the movement is all-rail, with certain exceptions, the initial carrier assumes the responsibility for the movement over the cheapest available route unless the consignor gives directions to the contrary. *Conf. Ruling 214(c)*. *Schuhle's Pure Grape Juice Co. v. Director General*, as Agent, 485.

RATE MAKING.

Carriers may properly make rates to meet competitive conditions, so long as such rates are reasonably compensatory and do not give rise to undue prejudice or preference. Grain Rates from Minnesota and Wisconsin, 665 (672).

The commission can not agree with the contention that it must be guided solely by those things which are definite and certain in the past in fixing rates which will yield a specified return. The commission's function under the law is not that of mere computers and can not thus be atrophied. The duty to prescribe rates for the future carries with it the obligation to exercise an informed judgment upon all pertinent facts, present and past, in order to forecast the future as best it may. Reduced Rates, 1922, 676 (730).

REASONABLENESS OF RATE. *See* **MEASURE OF RATE.**

REBATES.

Upon investigation, divisions received by the Brimstone R. R. & Canal Co., found unjust, unreasonable, inequitable, and, to the extent that they exceed the cost of the service and a fair return upon the property of that company held for and used in service of transportation for the public generally, are excessive, and, in effect, a rebate to the Union Sulphur Co., the proprietary company. Divisions Received by Brimstone R. R. & Canal Co., 375.

One purpose of the act is to prevent rebates effected by means of exorbitant divisions which find their way to proprietary companies through common carrier short lines. The commission can not overlook the fact that high dividends have been declared in the instant case in the past or that the accumulated surplus is now sufficient to declare a dividend of almost 100 per cent on the capital stock. *Id.* (386-387).

RECAPTURE OF EXCESS EARNINGS.

In the recapture provisions of section 15a of the act Congress recognized that uniform rates on competitive traffic which would adequately sustain all the carriers would produce substantially and unreasonably more than a fair return for some carriers. The commission should not take the few and the highest type of their securities as the basis for determining what shall be a fair return for all. *Reduced Rates, 1922, 676 (681).*

While return must not exceed a reasonable charge against the public service, it must be such as to obtain needed new capital. It is necessary to determine and make public, as required by section 15a of the act, a percentage of fair return. Determination of the percentage implies, or carries with it, no guaranty. Read in connection with the provision for recapture of one-half of the excess above 6 per cent it is, instead, a limitation. *Id.* (681).

RECIPROCAL SWITCHING. See also INTERCHANGE SWITCHING.

Increased charges for switching at Kansas City, Mo.-Kans., proposed by the St. Louis-San Francisco Ry., Missouri Pacific R. R., and Kansas City Southern Ry., found not justified. Cost studies submitted by carriers were based upon a formula agreed upon after conference, but the volume of business during the test period was subnormal and a considerable portion of the costs included in the studies is more or less constant and varies but little with the volume of business. Furthermore, operating costs should be coming down, and certain road-haul rates have been reduced. *Reciprocal Switching at Kansas City, 591.*

Fact that interchange switching rates are or are not reciprocal is unimportant, as the so-called reciprocity theory of establishing switching charges has been condemned by the commission. *Id.* (596).

RECONSIGNMENT. See also DIVERSION.

Lines serving final destinations, against which embargoes were in force, issued permits for diversion or reconsignment of certain shipments to such points. Carriers did not exercise their rights under the tariff to refuse to accept orders, but diverted or reconsigned shipments upon complainant's written instructions without requiring new bills of lading. *Held:* Combination rates to and from diversion or reconsignment points assessed found illegal to extent they exceeded through rates plus diversion, reconsignment, or other special charges. Reparation awarded. *Frick-Reid Supply Co. v. Director General, as Agent, 151.*

RECONSIGNMENT—Continued.

Proposed reduction by the C. & O. Ry. of reconsignment charge on lumber and other forest products at Boston, Mass., from \$7 to \$3 where reconsigning instructions are received after arrival of cars, found not justified. Proposed reduction would eliminate any inducement for shippers to give reconsignment instructions before arrival of car, the result would be a tendency toward congestion of traffic, and the present charges are generally uniform on all railroads throughout the country and were approved in the *Reconsignment Case*, 47 I. C. C., 590. *Reconsignment of Lumber and Forest Products at Boston*, 161.

Combination rates and charges on wheat from Lucas, Kans., inspected at Salina, Kans., and diverted to points in California, found illegal. There was nothing in a tariff naming lower joint rate which would have precluded shipper from routing through Salina had shipments been billed direct from Lucas to the California points; such lower joint rate was not restricted to apply via any particular route or the reconsigning privileges in connection therewith to any particular point; and, Salina being directly intermediate between points of origin and destination via route of movement, shipments were entitled to the inspection privilege at that point without additional charge. Reparation awarded. *Freeman Grain Co. v. Director General, as Agent*, 559.

Tariff governing diversion or reconsignment to points within switching limits before placement permitted a single change in name of consignee at destination, or a single change in or a single addition to designation of place of delivery at destination, without charge, if the order be received prior to arrival of car. Instructions relative to place of delivery of shipments here involved were not furnished until after arrival. *Held*: Reconsignment charges assessed found not unreasonable and a similar rule was not condemned in *Rockford Lumber & Fuel Co.*, 60 I. C. C., 217. *Alaska Junk Co. v. Director General, as Agent*, 615 (617).

Combination rate assessed on cement from Cape Girardeau, Mo., to Fisher, Ark., reconsigned to Little Rock, Ark., found unreasonable, due to the factor from Fisher to Little Rock. Tariff naming lower joint rate from Cape Girardeau to Fisher and Little Rock provided, in accordance with rule 77 of Tariff Circular 18-A, that rates would be established from intermediate points, not exceeding those from more distant points. Reparation awarded. *Cape Girardeau Portland Cement Co. v. Director General, as Agent*, 635.

Tariff rule which provided that if a car had been placed for unloading at original billed destination and was reforwarded therefrom without being unloaded it would be subject to rates to and from point of reconsignment, plus reconsignment charges, found not unlawful where the combination of rates to and from the point of reconsignment was not unreasonable. *Id.* (636).

REDUCED RATES.

The commission has no authority to require carriers to establish for particular passengers or particular occasions special fares lower than the regular fares. *Reduced Rates*, 1922, 676 (729).

REDUCTION IN RATES.**In General:**

If a rate charged was unreasonable, the absence of a request for a reduction prior to the commencement of the movement is immaterial. *Procter & Gamble Co. v. A. N. R. R. Co.*, 121 (123).

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REDUCTION IN RATES—Continued.**In General—Continued.**

If rates on all low-grade commodities should be reduced solely if and because they produced a higher revenue than the average of all freight, such a reduction would result in a lowering of the average which in turn would require a further reduction in the rates on the low-grade commodities, and this theory could be extended *ad infinitum*. National Paving Brick Mfrs. Assn. v. A. & V. Ry. Co., 213 (231).

The needs of commerce can not be met if rates are to fluctuate with market prices of commodities. In bringing down a rate level to meet lowered expenses reductions should be made generally upon all commodities in substantially equal ratio. Reduced Rates, 1922, 676 (734).

By Carriers:

Proposed reduced rates on bituminous coal from mines on the Missouri Pacific R. R. in southern Illinois to destinations in Arkansas, Louisiana, and Texas, for the purpose of increasing the volume of movement from such southern Illinois mines, and which are no higher than those now in effect from competing mines in Alabama and western Kentucky, found not unjustly discriminatory or unduly prejudicial. Coal from Illinois to Arkansas, Louisiana, and Texas, 1.

Proposed reduced rates on bituminous coal from points on the C. & O. Ry. in eastern Kentucky and West Virginia to St. Louis, Mo., to meet the rate applicable via the L. & N. from its contiguous mines in eastern Kentucky to the same destination, and consequent proposed reduced rates from districts in northern Tennessee, eastern Kentucky, and southwestern Virginia on the L. & N. to points west of Louisville, Ky., on the St. Louis division of the Southern Ry. in Indiana and Illinois, and to St. Louis, which will align them with those proposed by the C. & O., found justified. Coal from Kentucky, Tennessee, and West Virginia, 29.

Rates on fresh meats, in straight or mixed carloads, from Chicago, Ill., to Gary, Ind., found unreasonable as compared with rates to Gary from competitive points in Iowa, Missouri, Minnesota, and Indiana, for greater distances; from Chicago to various points for similar or greater distances; and to extent it exceeded lower rate subsequently established. Reparation awarded. Armour & Co. v. W. Ry. Co., 43.

Beef cattle rate applicable on stock cattle from Kansas City, Mo., to Oklahoma City, Okla., found unreasonable to extent it exceeded 75 per cent of the beef cattle rate contemporaneously in effect via other routes and subsequently established via route of movement. Waiver of undercharges authorized. Healy & Co. v. Director General, as Agent, 45.

Proposed reduced proportional rates from Chicago, Ill., and related points to South Atlantic and Gulf ports for application on traffic destined to the Pacific coast by steamship lines operating through the Panama Canal, the primary purpose of which is to put the South Atlantic and Gulf ports on a parity with New York, N. Y., on traffic destined to the Pacific coast and to thus afford the southern lines an opportunity to secure some of the traffic now moving all rail or through North Atlantic ports by rail and water, found justified. Rates from Chicago via Panama Canal, 74.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Combination class rate on sporadic shipments of fish oil moving from Port St. Joe, Fla., to Ivorydale, Ohio, each component of which was increased under *Increased Rates, 1920*, 58 I. C. C., 220, found unreasonable to extent it exceeded lower joint commodity rate, theoretically constructed by adding such increase, but once to lower combination, subsequently established. Reparation awarded. *Procter & Gamble Co. v. A. N. R. R. Co.*, 121.

Proposed reduction by the C. & O. Ry. of reconsignment charge on lumber and other forest products at Boston, Mass., from \$7 to \$3 where reconsigning instructions received after arrival of cars, found not justified. Proposed reduction would eliminate any inducement for shippers to give reconsignment instructions before arrival of car, the result would be a tendency toward congestion of traffic, and the present charges are generally uniform on all railroads throughout the country and were approved in the *Reconsignment Case*, 47 I. C. C., 590. *Reconsignment of Lumber and Forest Products at Boston*, 161.

Proposed reduced rates on coal from mines in Wyoming to points in Utah for the purpose of restoring a previously existing equality in rates from such Wyoming mines and the Castle Gate district of Utah found not justified. If reductions permitted, the Utah State commission or the carriers might reduce the rates from the Utah mines, practically fixing a differential as warrant for their action, resulting in that destructive competition so out of consonance with the fundamentals of the act, and entailing a conflict of authority with the State commission, which would have no place in modern rate regulation. *Coal from Wyoming Mines*, 254.

Rates on apples from Monitor and Wenatchee, Wash., to Deming, N. Mex., found not unreasonable as compared with lower rate to El Paso, Tex., and from other producing points to eastern and southern destinations for similar or greater distances, which lower rate was subsequently established from Monitor and Wenatchee to Deming. *Murray & Layne Co. v. A., T. & S. F. Ry. Co.*, 277.

Neither the subsequent voluntary reduction of a rate nor the percentage of increase effectuated by General Order No. 28 of the director general alone are controlling factors in determining the reasonableness of rates. *Gilpin, Langdon & Co. v. Director General, as Agent*, 292 (293).

Failure of defendants' to absorb the entire compress charge on shipments of cotton compressed at Weleetka, Okla., and reshipped to interstate destinations, thereby compelling complainants to make payments to compress companies in addition to transportation charges, found unreasonable. Tariffs of carriers were subsequently amended to provide for the absorption of the entire charge and rates have generally included the entire compress charge and are in reality based on the inclusion of a reasonable charge for that service. Reparation awarded. *Anderson, Clayton & Co. v. F. S. & W. R. R. Co.*, 299.

REDUCTION IN RATES—Continued.**By Carriers—Continued.**

Rate on "furnaces, air or steam" assessed on shipments of cast-iron furnaces with sheet-metal casings and caps, k. d., and crated, found not unreasonable as compared with lower rate on "cast-iron furnaces, k. d." which lower rate was subsequently established on cast-iron furnaces with sheet-iron or steel casings. *Monitor Stove Co. v. Director General, as Agent*, 305.

Rate on scrap iron from Silvis to Moline, Ill., during Federal control, increased under the minimum class scale prescribed in General Order No. 28 of the director general, found unreasonable to extent it exceeded lower commodity rate subsequently established, which rate compares favorably with similar and lower rates between other points in the immediate vicinity of Silvis. Reparation awarded. *Standard Rail & Steel Co. v. C., R. I. & P. Ry. Co.*, 317.

Any-quantity distance rate of 40 cents charged on cream from Concordia, Kans., to Crete, Nebr., found unreasonable to extent it exceeded proportional rate of 25 cents on single consignments of not less than 200 cans, subsequently established. Reparation awarded. *Fairmont Creamery Co. v. C., B. & Q. R. R. Co.*, 319.

Rate on gravel from Hattiesburg, Miss., to Beaumont, Tex., exceeded the aggregate of intermediate rates to and from New Orleans, La., on which basis a joint rate was maintained from Hattiesburg through Beaumont to Port Arthur, Tex., and which was subsequently established to Beaumont. Reparation awarded. *Magnolia Petroleum Co. v. Director General, as Agent*, 321.

Joint sixth-class rate which included marine insurance applicable on alum moving rail-water-and-rail from Chattanooga, Tenn., to Lodi, N. J., exceeded lower commodity rate plus marine insurance charges, subsequently established. Reparation awarded. *Kalbfleisch Corp. v. C. of G. Ry. Co.*, 333.

Rates on canned condensed milk from Glendale, Ariz., to various points in Texas exceeded lower rates from Tempe, Ariz., which lower rate was subsequently established from Glendale. Reparation awarded. *Pacific Creamery Co. v. A., T. & S. F. Ry. Co.*, 340.

Proposed reduced rates on sublimed lead and certain other pigments from central territory to eastern points, without corresponding reductions in westbound rates on the same commodities and without corresponding reductions from points east of the Buffalo-Pittsburgh line to eastern destinations, which would result in undue prejudice to manufacturers east of that line and in undue preference of manufacturers in central territory, found not justified. *Sublimed Lead to Trunk Line Points*, 343.

Contention that inasmuch as carriers propose reductions in rates they are under no burden of proof as to the reasonableness or propriety of such proposed reductions; and that order of suspension was improperly made and should be vacated, *Held*: The proponent of a change in lawfully existing rates must be prepared to justify the change, if called in question. The act provides for prevention as well as for cure, and undue prejudice and preference may be brought about as readily by reducing one as by increasing the other of two related rates. *Id.* (345).

REDUCTION IN RATES—Continued.**By Carriers—Continued.**

Combination rate on new steel rails exceeded lower joint rate on old rails which lower rate was subsequently made applicable to both new and old rails. Reparation awarded. *Republic of France v. Director General, as Agent*, 424.

Proposal of the C. & E. I. Ry. to reduce the interstate rates on brick, and articles taking same rates, from Danville, Ill., in the Wabash Valley group, to East St. Louis, Ill., for purpose of placing East St. Louis on the same basis as Granite City, and to meet the rates in effect over the Wabash, found not justified. Failure to treat the Wabash Valley group as one group in all directions on long-haul traffic was condemned in *National Paving Brick Mfrs. Asso.*, 68 I. C. C., 213, 242, and undue prejudice already existing would be increased unless corresponding reductions were made from other points in the group. *Brick, Clay and Clay Products*, 455.

Class rates on petroleum lubricating oil and grease from Newark, N. J., to Charlotte, N. C., and Atlanta, Ga., found unreasonable and unduly prejudicial to extent they exceeded lower commodity rates applicable from Jersey City, N. J., and other New York rate points. Lower rate, published subject to rule 77 of Tariff Circular 18-A, was subsequently established from Newark, a point directly intermediate between Jersey City and points of destination. Reparation awarded. *New York & New Jersey Lubricant Co. v. Director General, as Agent*, 477.

Rates on coal from Seelyville and Big Vein, Ind., to Rialto and Crescentville, Ohio, found unreasonable as compared with rates from Illinois and Indiana mines to destinations in Ohio for similar or greater distances, and to extent they exceeded lower rates subsequently established. Reparation awarded. *Fox Paper Co. v. Director General*, 479.

Rate on crude petroleum, in tank cars, from Wichita Falls, Tex., to Oklahoma City and Cushing, Okla., exceeded lower rate to Tulsa, Sapulpa, and Okmulgee, Okla., farther distant points, which lower rate was subsequently established to Oklahoma City and Cushing. Reparation awarded. *Anderson & Gustafson v. Director General, as Agent*, 496.

Class rates on filtering clay, ground and baked, from Ardmore, S. Dak., to Omaha, Nebr., and Kansas City, Mo., found not unreasonable as compared with lower class rates on numerous other clay products or with lower commodity rates subsequently established. *Refinite Co. v. Director General, as Agent*, 545.

Proposed reduced proportional rate on petroleum and its products from the Shreveport, La., group to Baton Rouge, La., and Natchez and Vicksburg, Miss., found justified for application on shipments to certain States in southeastern territory. *Petroleum and its Products from Shreveport*, 564.

Class rate on rock or shale dust from West Frankfort, Ill., to Christopher and Sesser, Ill., during Federal control, found unreasonable as compared with lower commodity rates on crushed stone and other low-grade commodities in the same territory. Reparation awarded to basis of commodity rate subsequently established. *Old Ben Coal Corp. v. Director General, as Agent*, 584.

REDUCTION IN RATES—Continued.**By Carriers—Continued.**

Rates on table and shelf oilcloth from Peekskill, N. Y., and Rock Island, Ill., to Portland, Oreg., exceeded lower rate contemporaneously in effect to San Francisco, Calif., which lower rate was subsequently made applicable to Portland. Reparation awarded. *Portland Traffic & Transportation Asso. v. S., P. & S. Ry. Co.*, 589.

Rate on crude oil, in tank-car loads, from Iowa Park, Tex., to New Orleans, La., found not unreasonable as compared with lower rate via routes other than route of movement and subsequently established via all lines. *Humble Oil & Refining Co. v. Director General, as Agent*, 629.

Rates on crude petroleum, in tank-car loads, from Homer, La., to Independence, Kans., and from points in the Ranger and Shreveport groups to points in Oklahoma Group 3 and Kansas Group 2, found unreasonable to extent they exceeded rates found reasonable in *Western Petroleum Refiners' Asso.*, 66 I. C. C., 426, in some instances, and to extent they exceeded rates subsequently established, in others. Reparation awarded. *Empire Refineries v. Director General, as Agent*, 648.

Proposed reduced proportional rates on grain and grain products, applicable all-rail, rail-lake-and-rail, and rail-lake-and-canal, from Minneapolis, Minn., and other points in the Northwest to points in trunk-line territory and New England, found not justified. *Grain Rates from Minnesota and Wisconsin*, 665.

If carriers propose rate reductions which they justify in part upon the ground that they are restricted to certain originating territory and upon the ground that they are subject to transit privileges at intermediate markets, they should be able to show that the rates will, in fact, be so restricted and that they will, in fact, be subject to such transit provision. *Id.* (675).

By Commission:

On further hearing, original report 55 I. C. C., 607, affirmed, and rates on refined petroleum oils, in tank-car loads, from Cushing, Pemeta, Oilton, and Blackwell, Okla., to Little Rock, Ark., moving as routed by shippers, found unreasonable to extent they exceeded lower rates via other routes prescribed by the commission in 18 I. C. C., 593, and 36 I. C. C., 109. Reasonable maximum rates prescribed and reparation awarded. *Roxana Petroleum Co. v. Director General, as Agent*, 77.

Following *West Coast Lumbermen's Asso.*, 44 I. C. C., 443, charges collected on cedar shingles from points in Oregon, Washington, and British Columbia, to Chicago, Ill., St. Louis, Mo., and points in Illinois, Indiana, Iowa, Michigan, Missouri, and Wisconsin found unreasonable to extent that they exceeded charges at rate of 65 cents per 100 pounds. Reparation awarded. *Bloedel-Donovan Lumber Co. v. Director General, as Agent*, 95.

REDUCTION IN RATES—Continued.

By Commission—Continued.

Rates on sand from Grinter, Kans., to points within the switching district of Kansas City, Mo., were on a parity with rates from other Kaw River sand-producing points. Due to the general increases under General Order No. 28 of the director general and *Increased Rates, 1920*, 58 I. C. C., 220, relationship disrupted as to Grinter. *Held*, Rates from Grinter found unreasonable as under a group arrangement that point should be included in the same group as such other Kaw River points. Reasonable rates prescribed and reparation awarded. *Stewart Sand Co. v. A., T. & S. F. Ry. Co.*, 111.

Fifth-class rate on iron-foundry flasks from Chicago Heights, Ill., to Oakland, Calif., found unreasonable to extent it exceeded lower commodity rate on rough iron and steel castings and ingot molds and other iron and steel articles of equal or higher grade than foundry flasks. Reasonable rate prescribed and reparation awarded. *American Manganese Steel Co. v. Director General, as Agent*, 149.

In order to restore the parity in rates through the various gateways, on fresh meats, poultry, and packing-house products, destined to points in the Southeast, carriers increased the rates via the Ohio River crossings in amounts exceeding those authorized in *Increased Rates, 1920*, 58 I. C. C., 220, to equalize them with rates via Memphis, Tenn. Contention that such equalization should have been brought about by reducing the rates via Memphis, sustained. Rates found unreasonable for the future and reasonable maximum rates prescribed. *Swift & Co. v. A., T. & S. F. Ry. Co.*, 157.

Combination rates applicable on waste paper from New York, Brooklyn, and Long Island City, N. Y., to Bogota, N. J., found unreasonable due to the factor beyond Little Ferry, N. J. Reparation awarded and reasonable maximum rates prescribed. *Continental Paper Co. v. Director General, as Agent*, 162.

Rate on shipments of fuel oil, in tank-car loads, refused at Hutchinson, Kans., and returned to Ponca City, Okla., found unreasonable to extent it exceeded lower distance commodity rate applicable for like distances from certain points in southeastern Kansas to Oklahoma points. Reasonable maximum rate prescribed and reparation awarded. *Empire Refineries (Inc.) v. Director General, as Agent*, 192.

Rate on fuel oil, in tank-car loads, from Ponca City, Okla., originally billed to Arkansas City, Kans., there rejected after placement for unloading and reconsigned to Hutchinson, Kans., found unreasonable to extent that the factor Arkansas City to Hutchinson exceeded lower distance commodity rate from Ponca City to Hutchinson via Arkansas City. Reasonable maximum rate prescribed and reparation awarded. *Id.* (192).

Interchange switching charge of the C. & N. W. Ry. at Harvard, Ill., found unreasonable to extent it exceeded interterminal switching charge maintained from industries on its rails to interchange tracks of connecting lines when destined to industrial tracks of such lines within the switching limits of one station or industrial switching district. Reasonable charge prescribed. *Hunt, Helm, Ferris & Co., v. C. & N. W. Ry. Co.*, 283.

REDUCTION IN RATES—Continued.**By Commission—Continued.**

Rates on import or interstate shipments of blackstrap molasses, in tank-car loads, from New Orleans, La., and Mobile, Ala., to Birmingham, Ala. found unreasonable and unduly prejudicial to Birmingham in favor of Nashville, Tenn. Reasonable and nonprejudicial rates prescribed and reparation awarded. *Western Grain Co. v. Director General, as Agent*, 335.

Charges applicable on staves from New Orleans, La., to Frellsen, La., originating at interstate points, and from Frellsen to New Orleans, for export, found unreasonable as compared with rates between New Orleans and other near-by points for similar distances. Reasonable rate prescribed and reparation awarded. *Louis Werner Stave Co. v. Director General, as Agent*, 395.

So-called net rates on hardwood logs, for manufacture and reshipment to interstate destinations, from Miston, Tenn., a branch line point, to Trimble, Tenn., found unreasonable. Reasonable maximum rate prescribed and reparation awarded. *Smith v. I. C. R. R. Co.*, 427.

Rates on ground wormseed, in bags and barrels, l. c. l., found unreasonable to extent they exceeded third-class ratings and rates on other kinds of seed, in less than carloads. Reasonable maximum rates prescribed and reparation awarded. *Standard Chemical Mfg. Co. v. Director General, as Agent*, 467.

Rates on gas oil and fuel oil from midcontinent fields in Kansas and Oklahoma, and from Joplin and Kansas City, Mo., to Crete, Hastings, and Grand Island, Nebr., and Sioux City, Iowa, found unreasonable, and reasonable rates prescribed. Reparation awarded. *Fairmont Creamery Co. v. Director General, as Agent*, 507.

Rates charged on c. l. and l. c. l. shipments of cane syrup in barrels, from certain points in Florida to Montgomery, Ala., found unreasonable to extent they exceeded the aggregate of intermediate rates to and beyond Haylow or Metcalf, Ga. Reasonable maximum rates prescribed and reparation awarded. *Alabama-Georgia Syrup Co. v. Director General, as Agent*, 618.

Upon investigation, freight rates and charges which were increased by authority of *Increased Rates, 1920*, 58 I. C. C., 220 and 302, found unreasonable on and after July 1, 1922, to extent that they exceed the rates in effect immediately prior to such increases by specified percentages. *Reduced Rates, 1922*, 676.

The raising of the rate level by the director general under General Order No. 28, and again by the commission under *Increased Rates, 1920*, 58 I. C. C., 220, were necessitated by increases in operating expenses. The latter have now partially receded. The rate increases were general and justified by the increase in general cost of service, and with decrease in that cost a rate decrease, also general, is justified. *Id.* (734).

A general reduction in the rate level, as substantial as the condition of the carriers will permit, will tend not only to lessen the transportation burden but also to equalize and stabilize the conditions under which commerce and industry are carried on, with consequent fuller assurance to the carriers of realizing the fair return contemplated by the law. *Id.* (734).

REFUND. See **OVERCHARGES.**

REFUSED SHIPMENT.

Rate on shipments of fuel oil, in tank-car loads, refused at Hutchinson, Kans., and returned to Ponca City, Okla., found unreasonable to extent it exceeded lower distance commodity rate applicable for like distances from certain points in southeastern Kansas to Oklahoma points. Reasonable maximum rate prescribed and reparation awarded. *Empire Refineries (Inc.) v. Director General, as Agent*, 192.

RELATIONSHIP OF RATES. *See also* **ADJUSTMENT OF RATES.**

Rate on stock cattle found unreasonable to extent it exceeded 75 per cent of the beef cattle rate. Waiver of undercharges authorized. *Healy & Co. v. Director General, as Agent*, 45.

While some forms of hollow building tile are more susceptible to damage than brick, the additional risk does not appear to be sufficient to warrant a difference in rates, particularly when it is considered that the average value of hollow building tile falls well within the range of values of brick. Hollow building tile is made from the same raw materials as brick, is used largely for the same purposes, and the various transportation elements are substantially the same. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (220).

While seconds and culls of the higher grade of brick compete with common brick, they are not necessarily to be regarded as such strictly competitive articles of the same class as to entitle them to the same rate. They can and should bear a greater share of the transportation burden than does ordinary common brick. *Id.* (221).

The impossibility of determining the exact relationship which the rates on any specific commodity bear to all freight is obvious. Even if exact statistics were available, so that the relationship of "all freight" and a specific commodity could be definitely determined it would be necessary to take into consideration the fact that all freight is a grand mixture of commodities, including products of agriculture, animals, mines, forests, manufactures, and miscellaneous commodities. *Id.* (230).

For distances not in excess of 150 miles, interstate rates on common brick, when loaded at random to the marked capacity of the car without protection against chipping or breaking, found unjust and unreasonable to extent that they exceed 80 per cent of the rates on articles in the uniform brick list. *Id.* (252).

Proposed change in the application of rates on asphalt, road oil, and wax tailings, the effect of which would be to increase the rates on those commodities to the rates on petroleum fuel oil, gas oil, and crude oil, found not justified. Because of difference in estimated weights some of the present rates on road oil produce charges higher than on refined oil, and if proposed schedules should become effective, this condition would be accentuated. *Petroleum Products to Iowa Points*, 471.

Rates on gas oil from points in Kansas, Missouri, Oklahoma, and Arkansas to Keokuk, Iowa, found unreasonable and unduly prejudicial to extent they exceeded rates 5 cents less than on gasoline and other refined oils from and to the same points, and to extent they exceeded the rates on gas oil to St. Louis, Mo., from certain points of origin, and a 1 cent differential over St. Louis from other points. Reasonable and non-prejudicial relationship prescribed and reparation awarded. *Keokuk Electric Co. v. Director General, as Agent*, 517.

RELATIVE ADJUSTMENT.

Rates on articles in the uniform brick list from Waterloo, Va., to New York, N. Y., for Pennsylvania delivery, prescribed, and in no event should the rate from Waterloo to other stations in New York exceed the rate from Clearfield, Pa., to the same stations. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (249).

RELATIVE RATES.

Bellingham and Sedro Woolley, Wash.: Rates on scrap iron from, to Seattle, Wash., during Federal control, found not unreasonable as compared with rates from Aberdeen, Wash., Portland, Oreg., and Vancouver, B. C., to the same destination. *Alaska Junk Co. v. Director General*, as Agent, 615.

Burmah, Idaho: Rate on a sporadic movement of scrap iron from, to Seattle, Wash., found not unreasonable as compared with lower commodity rate from Gooding, Jerome, and Milner, Idaho, from which points there is a substantial movement. *Kohan & Falk Co. v. O. S. L. R. R. Co.*, 313.

Camp Grant, Ill.: Rates on fuel wood from various points in Wisconsin to, found unreasonable to extent they exceeded the rate to Davis Junction, Ill., a farther distant point and to which Camp Grant is intermediate. Reparation awarded. *Central Wisconsin Supply Co. v. Director General*, as Agent, 400.

Deming, N. Mex.: Rates on apples from Monitor and Wenatchee, Wash., to, found not unreasonable as compared with lower rate to El Paso, Tex., and from other producing points to eastern and southern destinations for similar or greater distances, which lower rate was subsequently established from Monitor and Wenatchee to Deming. *Murray & Layne Co. v. A., T. & S. F. Ry. Co.*, 277.

Dinwiddie, Ind.: Rate applicable on hay from, to Memphis, Tenn., found unreasonable and unduly prejudicial to extent it exceeded the rate from Lowell, Ind., a competing point. Measure of reasonable maximum rate prescribed and reparation awarded. *Farmers Elevator Co. v. C., I. & L. Ry. Co.*, 159.

Flux, Utah: Rates applicable on lime rock from, to Burley, Paul, and McMillan, Idaho, found unreasonable as compared with rates on the same commodity between other points in the same general territory. Reparation awarded. *Amalgamated Sugar Co. v. Director General*, as Agent, 328.

Fort Smith, Ark.: Rate on crude petroleum, in tank-car loads, from milepost 343, Ranger, Tex., to, found unreasonable as compared with lower rates between other points for similar distances, and to extent it exceeded rate prescribed in *Western Petroleum Refiners Asso.*, 66 I. C. C., 426, from the Ranger group to St. Louis, Mo., for distances greater than over routes of movement. Reparation awarded. *Wagner & Steiner v. Director General*, as Agent, 138.

Fort Wayne, Ind.: Rates on bar iron from, to certain points in Indiana, Illinois, Wisconsin, and Missouri, found not unreasonable as compared with rates on the same commodity from Pittsburgh, Pa., to the same destinations. *Fort Wayne Rolling Mill Corp. v. Director General*, as Agent, 439.

Freilsen, La.: Charges applicable on staves from New Orleans, La., to, originating at interstate points, and from Freilsen to New Orleans, for export, found unreasonable as compared with rates between New Orleans and other near-by points for similar distances. Reasonable rate prescribed and reparation awarded. *Louis Werner Stave Co. v. Director General*, as Agent, 395.

RELATIVE RATES—Continued.

Gary, Ind.: Rates on fresh meats, in straight or mixed carloads, from Chicago, Ill., to, found unreasonable as compared with rates to Gary from competitive points in Iowa, Missouri, Minnesota, and Indiana, for greater distances; from Chicago to various points for similar or greater distances; and to extent it exceeded lower rate subsequently established. Reparation awarded. *Armour & Co. v. W. Ry. Co.*, 43.

Glendale, Ariz.: Rates on canned condensed milk from, to various points in Texas found unreasonable to extent it exceeded lower rates from Tempe, Ariz., which lower rate was subsequently established from Glendale. Reparation awarded. *Pacific Creamery Co. v. A., T. & S. F. Ry. Co.*, 340.

Indiana mines: Rates applicable on intrastate shipments of bituminous coal moving during Federal control from various Indiana mines to Aurora and Frankton, Ind., found unreasonable as compared with rates between other points in the same general territory for similar distances, and to extent they exceeded a rate which would yield a return of approximately 8 mills per ton-mile. Reparation awarded. *Opp Coal Co. v. Director General, as Agent*, 349.

Iowa Park, Tex.: Rate on crude oil, in tank-car loads from, to New Orleans, La., found not unreasonable as compared with rates from Kansas and Oklahoma to various points for similar distances. *Humble Oil & Refining Co. v. Director General, as Agent*, 629.

Oklahoma City, Okla.: Rate on stock cattle from Kansas City, Mo., to, found unreasonable to extent it exceeded lower rate to other Oklahoma points, which lower rate was subsequently made applicable to Oklahoma City. Waiver of undercharges authorized. *Healy & Co. v. Director General, as Agent*, 45.

Oklahoma City and Cushing, Okla.: Rate on crude petroleum, in tank cars, from Wichita Falls, Tex., to, found unreasonable to extent it exceeded lower rate to Tulsa, Sapulpa, and Okmulgee, Okla., farther distant points, which lower rate was subsequently established to Oklahoma City and Cushing. Reparation awarded. *Anderson & Gustafson v. Director General, as Agent*, 496.

Parkersburg, W. Va.: Interstate rates on glass sand from Hancock, W. Va., to, found not unreasonable or discriminatory as compared with rates to East Liverpool, Ohio. *General Porcelain Co. v. Director General, as Agent*, 322.

Portland, Oreg.: Rates on table and shelf oilcloth from Peekskill, N. Y., and Rock Island, Ill., to, found unreasonable to extent it exceeded lower rate contemporaneously in effect to San Francisco, Calif., which lower rate was subsequently made applicable to Portland. Reparation awarded. *Portland Traffic & Transportation Asso. v. S., P. & S. Ry. Co.*, 589.

Rialto and Crescentville, Ohio: Rates on coal from Seelyville and Big Vein, Ind., to, found unreasonable as compared with rates from Illinois and Indiana mines to destinations in Ohio for similar or greater distances, and to extent they exceeded lower rates subsequently established. Reparation awarded. *Fox Paper Co. v. Director General*, 479.

Sand Spring, Okla.: Rates on soda ash from Hutchinson, Kans., to, found not unreasonable or unduly prejudicial as compared with rates on like traffic for comparable or greater distances in western territory. *Kerr & Co. v. Director General, as Agent*, 653.

the same as to Darwin, Wis., a farther distant point. Carriers erroneously applied the increase under *Increased Rates, 1920*, 58 I. C. C., 220, and accordingly reduced the rate to Darwin but not to Stoughton. Subsequently parity restored by establishment of a specific commodity rate to Stoughton. *Held*: Since Darwin rates were applicable to Stoughton, shipments were overcharged. Rate charged found unreasonable and reparation awarded. *Wisconsin Dairy Products Co. v. C., M. & St. P. Ry. Co.*, 307.

RELEASED RATES.

Commodity rates were prepaid on alcohol of an "actual value not exceeding \$2.50 per gallon." Subsequently on the ground that actual value exceeded \$2.50 per gallon charges were corrected to the basis of class rates applicable on alcohol without limitation as to value. *Held*: Limitations attached to commodity rates were unlawful and void under the Cummins amendment but such commodity rates were lawful and applicable as to these shipments, as commodity rates take preference over class rates and specific commodity rates take preference over general commodity rates. Shipments found overcharged and refund directed. *U. S. Industrial Alcohol Co. v. Director General*, 389.

It is immaterial whether bills of lading are made out by shippers or carriers' agents. Where value stated therein is declared by shippers such declarations of value do not directly limit carriers' liability. If goods are lost or damaged in transit and shippers make claims based on values in excess of that declared, they are subject to prosecution under section 10 of the act. Thus carriers' liability is indirectly, but effectively, limited by these necessary declarations of value, and such limitations as to value attached to rates are unlawful and void. *Id.* (391-392).

Following *U. S. Industrial Alcohol Co.*, 68 I. C. C., 389, shipments of soap found to have been overcharged. Rates were made dependent upon declarations of value made by shippers but not authorized by the commission under the second Cummins amendment, and while void, when stripped of the void limitation, were valid and applicable. Reparation awarded. *Swift & Co. v. Director General, as Agent*, 537.

REMEDY.

Where a shipper acts as agent of line-haul carriers for the performance of a service, it is entitled to compensation for what its services under that employment are worth, and may sue for it in a court of competent jurisdiction. *United Verde Extension Mining Co. v. Director General, as Agent*, 271 (272).

REPARATION. See DAMAGES.

REQUEST.

If a rate charged was unreasonable, the absence of a request for a reduction prior to the commencement of the movement is immaterial. *Procter & Gamble Co. v. A. N. R. R. Co.*, 121 (123).

RESHIPMENT.

Tariff rule providing that only one change in destination would be permitted at the through rate, and that if subsequent change requested, shipment would be treated as a reshipment from point of reforwarding, found not unreasonable. Failure of carrier to promptly transmit instructions to disregard first diversion order, ample time intervening between dates when instructions received and complied with, resulted in charges in excess of those which would have accrued on basis of one diversion. Refund of overcharges directed. *Standard Oil Co. v. Director General, as Agent*, 143.

RESTORED RATES. *See also* **EQUALIZING RATES.**

Director general canceled the "per car" rates on live stock and established rates in cents per 100 pounds. After termination of Federal control carriers restored the "per car" basis. *Held*: While transportation characteristics of live stock are different from those on lumber and grain, the earnings per car and per car mile on the latter were substantially higher than those on live stock, which comparison tends to show that the charges assessed during the interim were not unreasonably high. *Carstens Packing Co. v. Director General, as Agent*, 125.

Rates on tin cans from Cragin, Ill., to Stoughton, Wis., were the same as to Darwin, Wis., a farther distant point. Carriers erroneously applied the increase under *Increased Rates, 1920*, 58 I. C. C., 220, and accordingly reduced the rate to Darwin but not to Stoughton. Subsequently parity restored by establishment of a specific commodity rate to Stoughton. *Held*: Since Darwin rates were applicable to Stoughton, shipments were overcharged. Rate charged found unreasonable, and reparation awarded. *Wisconsin Dairy Products Co. v. C., M. & St. P. Ry. Co.*, 307.

For many years the rate on soda ash from Detroit and Wyandotte, Mich., to Salem and Millville, N. J., was constructed on the basis of a 5-cent arbitrary over the rate to Philadelphia, Pa. Under General Order No. 28 of the director general arbitrary increased to 6.5 cents. Subsequently former arbitrary restored via various routes and later via route of movement. *Held*: Rate charged during period of movement when lower rate in effect via routes other than route of movement found not unreasonable. *Salem Glass Works v. Director General, as Agent*, 643.

RESTRICTED RATES.

Combination rate on apples from Chelan, Wash., to Dallas, Tex., there stored in transit and forwarded to El Paso, Tex., found not unreasonable or unduly prejudicial. Lower group rate contemporaneously in effect, but such lower rate was restricted to delivery via certain lines over which shipments did not move. *El Paso Chamber of Commerce v. Director General, as Agent*, 135.

Where carriers, in publishing tariffs, failed to restrict the application of certain rates to tin or other metal caps, such rates found to be applicable to shipments of paper bottle-neck wrappers or caps. Refund of overcharges directed. *Los Angeles Ice & Cold Storage Co. v. Director General, as Agent*, 155.

RESTRICTED RATES—Continued.

Combination rates and charges on wheat from Lucas, Kans., inspected at Salina, Kans., and diverted to points in California, found illegal. There was nothing in a tariff naming lower joint rate which would have precluded shipper from routing through Salina had shipments been billed direct from Lucas to the California points; such lower joint rate was not restricted to apply via any particular route or the reconsigning privileges in connection therewith to any particular point; and, Salina being directly intermediate between points of origin and destination via route of movement, shipments were entitled to the inspection privilege at that point without additional charge. Reparation awarded. *Freeman Grain Co. v. Director General, as Agent*, 559.

If carriers propose rate reductions which they justify in part upon the ground that they are restricted to certain originating territory and upon the ground that they are subject to transit privileges at intermediate markets, they should be able to show that the rates will in fact be so restricted and that they will in fact be subject to such transit provision. *Grain Rates from Minnesota and Wisconsin*, 665 (675).

RETROACTIVE.

The commission does not ordinarily give retroactive effect to a transit service in the absence of unjust discrimination or undue prejudice and damage thereunder. *DeJean v. Director General, as Agent*, 611 (614).

RETURN ON INVESTMENT.

The law in its present form requires that the commission give due consideration, among other things, to the revenue needs of carriers participating in joint rates to enable them to pay operating expenses, taxes, and a fair return on the value of their carrier property used in the transportation service as well as to all other facts or circumstances which, without regard to the mileage haul, entitle one carrier to a greater or less proportion of a joint rate than is received by others. *Division of Joint Rates and Fares of M. & N. A. R. R. Co.*, 47 (53).

Fact that connecting lines are not earning a return upon the value of their property as great as was contemplated by section 15a of the act does not preclude the commission from making a just and reasonable adjustment of divisions. It is necessary that all essential transportation facilities of the country be kept in operation. *Id.* (61).

In reaching a decision on the question of just and reasonable divisions the commission herein took into consideration the relation between the earnings realized by the carriers and the earnings contemplated by section 15a of the act. *Id.* (61).

Upon investigation, divisions received by the Brimstone R. R. & Canal Co., found unjust, unreasonable, inequitable, and, to the extent that they exceed the cost of the service and a fair return upon the property of that company held for and used in service of transportation for the public generally, are excessive, and, in effect, a rebate to the Union Sulphur Co., the proprietary company. *Divisions Received by Brimstone R. R. & Canal Co.*, 375.

There should be a higher rate of return on the investment to cover amortization on a branch line, which will have only junk value when the timber is exhausted, than upon a branch line which serves a growing agricultural community. The latter produces traffic for the main line, although it may not show an individual profit. The difficulty of segregating the accounts of branch lines is not entitled to great weight. *Smith v. I. C. R. R. Co.*, 427 (433).

RETURN ON INVESTMENT—Continued.

Upon investigation, *Held*: That on and after March 1, 1922, a fair return upon the aggregate value of the carriers defined in section 15a of the act, determined as therein provided, will be 5½ per cent of such aggregate property value as a uniform percentage for all rate groups or territories designated by the commission. *Reduced Rates, 1922, 676.*

Carriers failed by a considerable margin to earn the authorized return as provided in *Increased Rates, 1920, 58 I. C. C., 220.* Contention that the question of a fair return for the future is academic and that it is unnecessary to determine a percentage of return at this time, *Held*: The economic forces which prevented or prevent carriers from earning a fair return under the adjustment of rates then prevailing does not constitute a bar to determination of what a fair return should be. By the qualifying words "as nearly as may be," in section 15a of the act, Congress recognized that conditions during certain periods might prevent such realization under any adjustment of rates. *Id. (680).*

The provisions of section 15a of the act have been framed in recognition of constitutional guaranties of fair return upon property devoted to public use. *Id. (680).*

What will constitute a fair return under paragraph (3) of section 15a of the act is distinct from that of initiating and adjusting rates under paragraph (2) of that section. Section 15a contemplates the determination of a return which the carriers may attain over a period of time under rates adjusted from time to time with that object in view. The phrase "from time to time" does not mean that the commission should adjust and readjust rates to meet business fluctuations. Whether carriers may be able to earn an aggregate net railway operating income equal to a fair return must depend to a large extent upon business conditions. *Id. (680).*

Carriers must attract money by rates of return and stability of investment. While return must not exceed a reasonable charge against the public service, it must be such as to obtain needed new capital. It is necessary to determine and make public, as required by section 15a of the act, a percentage of fair return. Determination of the percentage implies, or carries with it, no guaranty. Read in connection with the provision for recapture of one-half of the excess above 6 per cent it is, instead, a limitation. *Id. (681).*

Because the yield on some railroad bonds has declined to something over 5 per cent it does not follow that a fair return should approximate that percentage. *Id. (681).*

The commission does not deal alone with interest rates on mortgage obligations, or with the more favorably located and prosperous carriers whose credit conditions may enable them to obtain money at relatively advantageous rates. In the recapture provisions of section 15a of the act Congress recognizes that uniform rates on competitive traffic which would adequately sustain all the carriers would produce substantially and unreasonably more than a fair return for some carriers. The commission should not take the few, and the highest type of their securities, as the basis for determining what shall be a fair return for all. *Id. (681).*

RETURN ON INVESTMENT—Continued.

The intent of Congress under section 15a of the act was to create a steady and reliable flow of money "for enlarging such facilities in order to provide the people of the United States with adequate transportation." A substantial reduction in the percentage of return might be unsettling in its effect, particularly in light of the fact that the return allowed in 1920 was not realized. The fact that a utility may reach financial success only in time or not at all is a reason for allowing a liberal return on the money invested in the enterprise. *Id.* (682).

In numerous cases courts and regulating authorities of States have recognized that public utilities and railroads may be permitted individually to earn under reasonable rates at least 6 per cent upon fair value. In some instances higher rates of return have been approved. *Id.* (682).

Provisions of the interstate commerce act quoted indicating that 6 per cent may be regarded as a fair return. *Id.* (682-683).

That Congress by direct legislation fixed the fair return for the period of two years beginning March 1, 1920, at the rate of 5½ per cent, to which, in the commission's discretion, it might add not exceeding one-half of 1 per cent, is a matter which may fairly be considered in the determination of the rate for the period immediately ensuing. But, taken in connection with the other provisions of section 15a of the act, it does not constrain the commission to consider 5½ per cent as maximum in determining a fair return for the ensuing period. *Id.* (682-683).

Railway corporations should, like other corporations, pay their Federal income taxes out of income rather than collect it, in effect, from the public in the form of transportation charges adjusted to enable them to retain the designated fair return over and above the tax. *Id.* (683).

Tables reflecting for Class I carriers, including switching and terminal companies, the trend of operating revenues, expenses, and income by calendar years 1916-1921, and of net railway operating income since September 1, 1920, by months, the rate of return being adjusted to an annual basis according to seasonal variations. *Id.* (686-687).

One of the greatest problems confronting the carriers to-day is to provide efficient service at a reasonable cost. If the purpose of section 15a of the act to afford carriers a reasonable return is to be attained, earnest efforts toward reduction of operating expenses in all possible ways consistent with good service must be continued. *Id.* (690).

The commission can not agree with the contention that it must be guided solely by those things which are definite and certain in the past in fixing rates which will yield a specified return. The commission's function under the law is not that of mere computers and can not thus be atrophied. The duty to prescribe rates for the future carries with it the obligation to exercise an informed judgment upon all pertinent facts, present and past, in order to forecast the future as best it may. *Id.* (730).

A general reduction in the rate level, as substantial as the condition of the carriers will permit, will tend not only to lessen the transportation burden but also to equalize and stabilize the conditions under which commerce and industry are carried on, with consequent fuller assurance to the carriers of realizing the fair return contemplated by the law. *Id.* (734).

REVENUE. See EARNINGS,

68 I. C. C.

RIPRAP.

Proposed description of riprap as small and irregular-shaped rock ranging in size up to 200 pounds weight, found justified. Riprap between Texas and Louisiana, 475.

RIVER CROSSINGS.

In order to restore the parity in rates through the various gateways on fresh meats, poultry, and packing-house products, destined to points in the Southeast, carriers increased the rates via the Ohio River crossings in amounts exceeding those authorized in *Increased Rates, 1920*, 58 I. C. C., 220, to equalize them with rates via Memphis, Tenn. Contention that such equalization should have been brought about by reducing the rates via Memphis sustained. Rates found unreasonable for the future and reasonable maximum rates prescribed. *Swift & Co. v. A. T. & S. F. Ry. Co.*, 157.

ROUTES.

Beef cattle rate applicable on stock cattle from Kansas City, Mo., to Oklahoma City, Okla., found unreasonable to extent it exceeded 75 per cent of the beef cattle rate contemporaneously in effect via other routes and subsequently established via route of movement. Waiver of undercharges authorized. *Healy & Co. v. Director General, as Agent*, 45. On further hearing, original report, 55 I. C. C., 607, affirmed, and rates on refined petroleum oils, in tank-car loads, from Cushing, Pemeta, Oilton, and Blackwell, Okla., to Little Rock, Ark., moving as routed by shippers, found unreasonable to extent they exceeded lower rates via other routes, prescribed by the commission in 18 I. C. C., 593, and 36 I. C. C., 109. Reasonable maximum rates prescribed and reparation awarded. *Roxana Petroleum Co. v. Director General, as Agent*, 77.

Shippers could have secured lower rates by leaving the routing open or by selecting routes over which lower rates applied. *Held*: Mere fact that the rate between two points is higher over one route than over others does not in itself establish that the higher rate is unreasonable; but shippers are entitled to reasonable rates over the routes selected by them. *Id.* (80).

Combination rates on apples from Chelan, Wash., to Dallas, Tex., there stored in transit, and forwarded to El Paso, Tex., found not unreasonable or unduly prejudicial. Lower group rate contemporaneously in effect, but such lower rate was restricted to delivery via certain lines over which shipments did not move. *El Paso Chamber of Commerce v. Director General, as Agent*, 135.

Route specified in bill of lading, but no rate. Shipment moved as routed, but joint rate, consistent with routing instructions, lower than combination assessed, in effect. *Held*: Rate charged found unreasonable and reparation awarded. *American Plate Glass Co. v. Director General, as Agent*, 141.

Contractor's outfit moving during Federal control from Alice, Minn., through Duluth, Minn., to New Duluth, Minn., found to have been mis-routed. Shipment should have moved over an intrastate route through Cloquet, Minn., at lower combination rate than charged. Reparation awarded. *Jacobson Bros. v. N. P. Ry. Co.*, 201.

Shipment moved as routed via two-line haul. Lower rate in effect from and to the same points involving a single-line haul direct. *Held*: Fact that a lower rate was and is applicable between two points over a single line does not of itself prove that a higher rate for a two-line haul from and to the same points is unreasonable. *Magargee Bros. (Inc.) v. D. & H. Co.*, 203.

ROUTES—Continued.

Rates on riprap stone from the Bedford (Ind.) district to Chicago, Ill., via the Chicago, Indianapolis & Louisville or Chicago, Terre Haute & Southeastern railroads, found not unreasonable. Fact that a lower rate was in effect over the Illinois Central for greater distances in the same general territory does not in itself warrant a finding that the higher rate of the other two lines was unreasonable. *Great Lakes Dredge & Dock Co. v. Director General, as Agent*, 274.

Combination rates applicable on bituminous coal from West Clinton, Ind., moving via Chicago, Ill., to Ottumwa, Iowa, and reconsigned to various destinations in Iowa and Nebraska, found not unreasonable or unduly prejudicial as compared with lower combination rates via Peoria, Ill., over which route the services of an intermediate carrier not specified in routing instructions would have been required. *National Supply Co. v. C., B. & Q. R. R. Co.*, 285.

Contention that as carriers were under Federal control and operated as a unified system, and as routing specified by shippers was disregarded when speed and efficiency of service were thereby promoted, that shipments should have been forwarded via a lower rated route under General Order No. 1 of the director general, *Held*: That order provided that under certain circumstances the routing of shippers was to be disregarded, but also provided that rates applicable over routes designated should be observed. *Id.* (286).

Contention that shipments delivered unrouted should have been forwarded via rail-water-and-rail routes at rates lower than those applied for the all-rail movement of the shipments, *Held*: If a shipper desires his shipment to move via a water-and-rail route that is cheaper than the all-rail route, he must in delivering it to an initial carrier specify such routing, otherwise it is understood that the shipment is to move all-rail. *Conf. Ruling 190*. When the movement is all-rail, with certain exceptions, the initial carrier assumes the responsibility for the movement over the cheapest available route unless the consignor gives directions to the contrary. *Conf. Ruling 214 (c)*. *Schuhle's Pure Grape Juice Co. v. Director General, as Agent*, 485.

Rate on crude oil in tank-car loads, from Iowa Park, Tex., to New Orleans, La., found not unreasonable as compared with lower rate via routes other than route of movement and subsequently established via all lines. *Humble Oil & Refining Co. v. Director General, as Agent*, 629.

Contention that if carriers were permitted to disregard existing rate schedules under General Order No. 1 of the director general and establish through routes to promote speed and efficiency of transportation, it would have been just and reasonable to allow shippers, when a route over which a transit arrangement applied was embargoed, to forward shipments via another route not embargoed, and to allow the adjustment of charges on the basis of the transit rate, *Held*: Carriers' agents were not authorized to divert shipments over routes not provided for in tariffs, when the route ordinarily used was embargoed. *Lee Pendergrass Cotton Co. v. Director General, as Agent*, 637 (642).

Allegation of unreasonableness based upon the existence, during period of movement, of a lower rate via routes other than route of movement, and its subsequent establishment over routes shipments moved, not sustained. A rate over a particular route is not presumed to be unreasonable merely because a lower rate applies over other routes. *Salem Glass Works v. Director General, as Agent*, 643 (644).

ROUTES—Continued.

Allegation of unreasonableness based solely on the fact that through rate exceeded the sum of separately established rates to and beyond a point not intermediate to any destinations under consideration over any of the routes of movement or by any of the routes designated by the shipper, not sustained. No presumption of unreasonableness attaches to a joint rate applicable over a particular route because the aggregate of intermediate rates over another route would make a lower charge. *Humble Pipe Line Co. v. Director General, as Agent*, 651.

ROUTING INSTRUCTIONS.

No bills of lading were issued and shipments moved on mine manifests. Routing "Erie" requested by shipper found not to amount to an instruction to move the shipment via the Erie and Chicago & Erie because both are part of the same system. The Chicago & Erie is a separate corporate entity filing its own reports and tariffs with the commission, and lower rate applied via the Erie and Pennsylvania. Shipment found misrouted. *Carney v. Director General, as Agent*, 199.

Where routing instructions given by shipper are incomplete it is the carrier's duty to move the shipment over the cheapest reasonably available route, and where this is not done misrouting results. *Id.* (200).

Contention that as carriers were under Federal control and operated as a unified system, and as routing specified by shippers was disregarded when speed and efficiency of service were thereby promoted, that shipments should have been forwarded via a lower rated route under General Order No. 1 of the director general. *Held*: That order provided that under certain circumstances the routing of shippers was to be disregarded, but also provided that rates applicable over routes designated should be observed. *National Supply Co. v. C., B. & Q. R. R. Co.*, 285 (286).

RULES OF PRACTICE.

Rule III (p) cited. *Wasatch Coal Co. v. Director General, as Agent*, 118 (119).

RULES, REGULATIONS, AND PRACTICES.

Rules and regulations published in tariffs are as binding as published rates, and shippers are chargeable with knowledge of them. *El Paso Chamber of Commerce v. Director General, as Agent*, 185 (137).

It is not one of the common-carrier functions of pipe lines to protect the unwary from the irresponsible or unscrupulous, and where such protection is afforded through a rule which deprives legitimate shippers of the privilege of using their facilities the rule can not be sanctioned. *Brundred Bros. v. P. P. L. Co.*, 458 (465).

SAUR-COVERSTON FORMULA, 1920.

In order to show the terminal cost of handling brick traffic in central territory, carriers introduced cost studies based on the so-called Saur-Coverston formula, 1920. *National Paving Brick Mfrs. Assn. v. A. & V. Ry. Co.*, 213 (231).

Terminal cost of handling bituminous coal, computed on basis of the so-called Saur-Coverston formula, 1920. *Hydraulic-Press Brick Co. v. Director General, as Agent*, 295 (297).

SCALE OF RATES. See DISTANCE RATES.**SCRAP MATERIALS. See JUNK.**

SECONDHAND ARTICLES.

Third-class rating on tents, new and secondhand, found not unreasonable or otherwise unlawful as compared with rates on Chautauqua outfits, the movement of which is special and not comparable with that of used tents. It would be difficult, without affording an easy and convenient means for misbilling and discrimination, to establish ratings on damaged, used, or secondhand articles different from those on like articles new. *Carnie-Gouldie Mfg. Co. v. A., T. & S. F. Ry. Co.*, 40.

SECTION 1.

Duty of carriers under paragraph 12, and power of commission under paragraph 15, of section 1 of the act governing the distribution of cars, discussed. *Northern West Virginia Coal Operators' Asso. v. P. & L. E. R. R. Co.*, 167 (171).

Paragraph 9 of section 1 of the act makes it the duty of a common carrier under stated circumstances to construct, maintain, and operate, upon reasonable terms, switch connections with private sidetracks which may be constructed to connect with its rails by shippers tendering interstate commerce. But this duty does not arise until the shipper has provided the sidetrack. *Certain-Teed Products Corp. v. C., R. I. & P. Ry. Co.*, 260 (263).

SECTION 2. See also DISCRIMINATION.

Refusal of American Ry. Express Co. to extend its free collection and delivery service in Springfield, Mass., so as to include that section known as East Springfield, while affording such service to the so-called Park and Franconia sections, found not unjustly discriminatory. Traffic is not "like" within the meaning of that word as used in section 2 of the act; and the free collection and delivery service is not performed "under substantially similar circumstances and conditions." *East Springfield Citizens' Club v. American Ry. Exp. Co.*, 482.

SECTION 3. See PREFERENCES AND PREJUDICES.**SECTION 4. See also LONG AND SHORT HAUL; THROUGH AND LOCAL.**

The fourth section of the act does not apply to intrastate shipments moving during the period of Federal control. *Alaska Junk Co. v. Director General, as Agent*, 615 (616).

A mere accident of transportation whereby a shipment was carried through destination to the next farther distant point and then hauled back to its destination does not have the effect of making such farther distant point an intermediate point within the meaning of the fourth section of the act. *Humble Pipe Line Co. v. Director General, as Agent*, 651 (652).

SECTION 6.

Is intended to apply only to services, facilities, and privileges granted in connection with the actual handling or movement of freight or the transportation of and the rendering of specified services to passengers. *Certain-Teed Products Corp. v. C., R. I. & P. Ry. Co.*, 260 (262).

Fact that a carrier is a common-carrier corporation subject to the act generally does not operate as a bar to its engaging in lawful business activities other than common carriage, and charges in connection with such activities are not a proper subject of tariff publication. *Id.* (262).

SECTION 10.

It is immaterial whether bills of lading are made out by shippers or carriers' agents. Where value stated therein is declared by shippers, such declarations of value do not directly limit carriers' liability. If goods are lost or damaged in transit and shippers make claims based on values in excess of that declared, they are subject to prosecution under section 10 of the act. Thus carriers' liability is indirectly, but effectively, limited by these necessary declarations of value, and such limitations as to value attached to rates are unlawful and void. *U. S. Industrial Alcohol Co. v. Director General*, 389 (391-392).

SECTION 15. *See also* ALLOWANCES.

Under paragraph (6) of section 15 of the act, specific authority and direction are given the commission to consider, among other things, in prescribing and determining divisions, the "importance to the public of the transportation service" of the carriers concerned. *Division of Joint Rates and Fares of M. & N. A. R. R. Co.*, 47 (50).

Division of joint rates accorded the Federal Valley R. R. Co. on bituminous coal from mines on its line to interstate destinations not shown to have been or to be unjust, unreasonable, inequitable, or otherwise unlawful. Information furnished does not make possible adequate consideration of the various factors which paragraph (6) of section 15 of the act requires the commission to consider. *Federal Valley R. R. Co. v. T. & O. C. Ry. Co.*, 499.

SECTION 15a.

Fact that most of connecting lines are not earning a return upon the value of their property as great as was contemplated by section 15a of the act does not preclude the commission from making a just and reasonable adjustment of divisions. It is necessary that all essential transportation facilities of the country be kept in operation. *Division of Joint Rates and Fares of M. & N. A. R. R. Co.*, 47 (61).

In reaching a decision on the question of just and reasonable divisions the commission herein took into consideration the relation between the earnings realized by the carriers and the earnings contemplated by section 15a of the act. *Id.* (61).

Upon investigation, *Held*: That on and after March 1, 1922, a fair return upon the aggregate value of the carriers defined in section 15a of the act, determined as therein provided, will be 5½ per cent of such aggregate property value as a uniform percentage for all rate groups or territories designated by the commission. *Reduced Rates*, 1922, 676.

Carriers failed by a considerable margin to earn the authorized return as provided in *Increased Rates*, 1920, 58 I. C. C., 220. Contention that the question of a fair return for the future is academic and that it is unnecessary to determine a percentage of return at this time, *Held*: The economic forces which prevented or prevent carriers from earning a fair return under the adjustment of rates then prevailing does not constitute a bar to determination of what a fair return should be. By the qualifying words "as nearly as may be," in section 15a of the act, Congress recognized that conditions during certain periods might prevent such realization under any adjustment of rates. *Id.* (680).

The provisions of section 15a of the act have been framed in recognition of constitutional guaranties of fair return upon property devoted to public use. *Id.* (680).

SECTION 15a—Continued.

What will constitute a fair return under paragraph (3) of section 15a of the act is distinct from that of initiating and adjusting rates under paragraph (2) of that section. Section 15a contemplates the determination of a return which the carriers may attain over a period of time under rates adjusted from time to time with that object in view. The phrase "from time to time" does not mean that the commission should adjust and readjust rates to meet business fluctuations. Whether carriers may be able to earn an aggregate net railway operating income equal to a fair return must depend to a large extent upon business conditions. Id. (680).

Carriers must attract money by rates of return and stability of investment. While return must not exceed a reasonable charge against the public service, it must be such as to obtain needed new capital. It is necessary to determine and make public, as required by section 15a of the act, a percentage of fair return. Determination of the percentage implies, or carries with it, no guaranty. Read in connection with the provision for recapture of one-half of the excess above 6 per cent it is, instead, a limitation. Id. (681).

The commission does not deal alone with interest rates on mortgage obligations, or with the more favorably located and prosperous carriers whose credit conditions may enable them to obtain money at relatively advantageous rates. In the recapture provisions of section 15a of the act Congress recognized that uniform rates on competitive traffic which would adequately sustain all the carriers would produce substantially and unreasonably more than a fair return for some carriers. The commission should not take the few and the highest type of their securities as the basis for determining what shall be a fair return for all. Id. (681).

The intent of Congress under section 15a of the act was to create a steady and reliable flow of money "for enlarging such facilities in order to provide the people of the United States with adequate transportation." A substantial reduction in the percentage of return might be unsettling in its effect, particularly in light of the fact that the return allowed in 1920 was not realized. The fact that a utility may reach financial success only in time or not at all is a reason for allowing a liberal return on the money invested in the enterprise. Id. (682).

That Congress by direct legislation fixed the fair return for the period of two years beginning March 1, 1920, at the rate of 5½ per cent, to which, in the commission's discretion, it might add not exceeding one-half of 1 per cent, is a matter which may fairly be considered in the determination of the rate for the period immediately ensuing. But, taken in connection with the other provisions of section 15a of the act, it does not constrain the commission to consider 5½ per cent as maximum in determining a fair return for the ensuing period. Id. (682-683).

One of the greatest problems confronting the carriers to-day is to provide efficient service at a reasonable cost. If the purpose of section 15a of the act to afford carriers a reasonable return is to be attained, earnest efforts toward reduction of operating expenses in all possible ways consistent with good service must be continued. Id. (690).

SECTION 19a.

While the valuation of the railroads under section 19a of the act is still incomplete, it has progressed to such an extent that the commission may accept the results with fuller assurance, both as to particular roads and as showing general trends and principles. *Reduced Rates, 1922, 676 (684-685).*

SECTION 20. See CUMMINS AMENDMENT.**SECURITIES.**

The meeting of bond maturities can not be considered an item of operating expense. *Marion & Eastern R. R. Co. v. C. & E. I. R. R. Co., 17 (19).*

The commission does not deal alone with interest rates on mortgage obligations, or with the more favorably located and prosperous carriers whose credit conditions may enable them to obtain money at relatively advantageous rates. In the recapture provisions of section 15a of the act Congress recognized that uniform rates on competitive traffic which would adequately sustain all the carriers would produce substantially and unreasonably more than a fair return for some carriers. The commission should not take the few, and the highest type of their securities, as the basis for determining what shall be a fair return for all. *Reduced Rates, 1922, 676 (681).*

Carriers should not continue to provide for all needed capital by successive bond issues. Issuance of bonds in a disproportionate degree unduly increases fixed charges and tends to weaken the credit of the carriers. In such a process eventually a point must be reached where no new capital can be raised, except for short terms at high rates. *Id. (682).*

SEPARATION OF EXPENSES.

The difficulty of segregating the accounts of branch lines from those of main lines is not entitled to great weight. *Smith v. I. C. R. R. Co., 427 (433).*

SET UP AND KNOCKED DOWN.

Shipments of tops, bottoms, and sides, which had been nailed, cleated, or wired into shapes making it necessary only to twist together four wires and add a few nails to produce a complete set-up crate, found not to be crate material as described in the tariff but knocked down poultry crates or coops. *Day & Co. v. Director General, as Agent, 656.*

SHIP SIDE DELIVERY. See DELIVERY.**SHORTAGE OF CARS. See CAR SHORTAGE.****SHORT-HAUL TRAFFIC.**

Rates on sand from Grinter, Kans., to points within the switching district of Kansas City, Mo., were on a parity with rates from other Kaw River sand-producing points. Due to the general increases under General Order No. 28 of the director general and *Increased Rates, 1920, 58 I. C. C., 220*, relationship disrupted as to Grinter. *Held:* Rates from Grinter found unreasonable, as under a group arrangement that point should be included in the same group as such other Kaw River points. Reasonable rates prescribed and reparation awarded. *Stewart Sand Co. v. A., T. & S. F. Ry. Co., 111.*

Common brick is ordinarily short-haul traffic and for abnormal movements, or those in excess of 150 miles, carriers may reasonably charge the same rates as on face brick. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co., 213 (222).*

SHORT-HAUL TRAFFIC—Continued.

Failure of carriers to treat the so-called Wabash Valley group, comprising the Danville, Veedersburg, and Terre Haute groups of producing points in Indiana and Illinois, as one group in all directions on long-haul interstate brick traffic, found unjust and unreasonable. On short-haul interstate traffic from points within this group to Indiana-Illinois points the central territory distance scale herein prescribed should be observed as maximum, subject to the group and differential adjustment to Chicago, Ill., and related points. *Id.* (243).

Short-haul interstate rates on articles in the uniform brick list, within central territory, including all points in Illinois, and within trunk-line territory, found unreasonable to extent they exceed the scales herein prescribed, the group and differential adjustment to govern where higher rates result from that adjustment. *Id.* (247).

Present rates on articles in the uniform brick list from Perth Amboy and Winslow Junction, N. J., and other producing points in the same districts to New York, N. Y., found unreasonable to extent they exceed the rates which would result from the application of the short-haul rates prescribed herein for the distance to Jersey City, N. J., plus reasonable charges for the additional service involved in making delivery in New York. On short-haul traffic to Philadelphia, Pa., and other points in trunk-line territory the producing points in the Perth Amboy district should not be grouped, but the short-haul scale should be applied from the individual points of origin. *Id.* (248).

For distances not in excess of 150 miles, interstate rates on common brick, when loaded at random to the marked capacity of the car without protection against chipping or breaking, found unjust and unreasonable to extent that they exceed 80 per cent of the rates on articles in the uniform brick list. *Id.* (252).

Intrastate rates on run-of-mine bituminous coal from certain mines in the Brazil district, in Indiana, to complainant's plant at Brazil, during Federal control, found unreasonable to extent they exceeded rate found reasonable in *Clinton Paving Brick Co.*, 66 I. C. C., 338. Reparation awarded. *Hydraulic Press Brick Co. v. Director General, as Agent*, 295 (297).

SHORT LINES.

Brimstone R. R. & Canal Co. found to be a common carrier subject to the act. Divisions Received by Brimstone R. R. & Canal Co., 375 (386).

Delaware River & Union R. R. Co. found not to be a common carrier subject to the act, but under the test laid down in the *Tap Line cases*, 234 U. S., 1, 24, found to be a plant facility. *Sun Co. v. Director General, as Agent*, 11 (14).

Peoria & Pekin Union Ry. Co. found to be an independent common carrier subject to the act and as such is entitled to just and reasonable compensation for the services which it renders. *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, 412 (417).

Wyandotte Terminal R. R. Co. found to be a common carrier subject to the act. *Wyandotte Terminal R. R. Co.*, 346.

SIDETRACK.

Collection of a trackage charge by the Chicago, Ottawa & Peoria Ry. Co. for the use of a portion of its track at Marseilles, Ill., operated as a private switch track, found not unlawful. The amount of consideration paid for the use of this track is a matter of private contract over which the commission has no jurisdiction. *Certain-Teed Products Corp. v. C., R. I. & P. Ry. Co.*, 260.

SIDETRACK—Continued.

There is no duty on the part of common carriers subject to the act to provide tracks off their lands to effect connection with an industry. If an industry desires connection with a trunk line, the duty devolves upon it to make arrangements for the procuring of a spur. *Id.* (263).

Paragraph 9 of section 1 of the act makes it the duty of a common carrier under stated circumstances to construct, maintain, and operate, upon reasonable terms, switch connections with private sidetracks which may be constructed to connect with its rails by shippers tendering interstate commerce. But this duty does not arise until the shipper has provided the sidetrack. *Id.* (263).

SPORADIC MOVEMENT.

Combination class rate on sporadic shipments of fish oil moving from Port St. Joe, Fla., to Ivorydale, Ohio, each component of which was increased under *Increased Rates, 1920*, 58 I. C. C., 220, found unreasonable to extent it exceeded lower joint commodity rate, theoretically constructed by adding such increase but once to a lower combination, subsequently established. Reparation awarded. *Procter & Gamble Co. v. A. N. R. R. Co.*, 121.

Rate on a sporadic movement of scrap iron from Burmah, Idaho, to Seattle Wash., found not unreasonable as compared with lower rate on various other commodities from and to the same points, or as compared with rates on the same commodity from Gooding, Jerome, and Milner, Idaho, from which points there is a substantial movement. *Kohan & Falk Co. v. O. S. L. R. R. Co.*, 313.

SPOTTING CARS.

Failure of defendants to perform, or to make an allowance for the service of spotting cars at points of loading and unloading within complainant's plant at Marcus Hook, Pa., within the Philadelphia, Pa., rate district, while performing such service for competitors in the same rate district without charge in addition to the district rates, found not unreasonable, discriminatory, or unduly prejudicial. No request has ever been made by complainant upon the trunk line carriers to perform a general spotting service at its plant. *Sun Co. v. Director General, as Agent*, 11.

Refusal of carriers to increase per car allowance for spotting service performed by complainant within its plant at Sharon, Pa., found not to result in unreasonable rates or to subject complainant to undue prejudice or unjust discrimination. Record fails to show extent to which allowance is less than would be just and reasonable, or extent to which it falls short of reimbursing complainant for the cost of performing services substantially like those performed by carriers for competitors without charge. *Stewart Furnace Co. v. P. R. R. Co.*, 528.

No legal obligation rests upon a carrier to perform switching and spotting services solely at a shipper's convenience, and a shipper is not entitled to an allowance for these services if the carrier is ready and willing to perform them, but is not permitted to do so by the shipper. Shipper's refusal to permit carriers to perform such service would absolve them from the obligation to do so. *Id.* (530).

If carriers continue to do spotting for a shipper's competitors at the convenience of their industries, such shipper is entitled to like accommodation, and any unjust discrimination or undue prejudice which may exist might be removed by according shipper the same spotting service as carriers perform for its competitors. *Id.* (530).

SPOTTING CARS—Continued.

The act makes it unlawful for carriers to allow more than just and reasonable compensation to an industry for transportation services or facilities furnished by it. *Id.* (532).

The failure or refusal of carriers to perform spotting service for a shipper, or to reimburse it for the cost thereof, while performing a like service without charge for others similarly situated, is unduly prejudicial to such shipper and unduly preferential of its competitors. *Id.* (533).

The failure or refusal of carriers to perform for a shipper a spotting service included in line-haul rates or to make an allowance therefor equal to the cost to such shipper of performing the service or to what the cost to carriers would be if they should perform it, whichever may be lower, would subject such shipper to unreasonable rates and charges for the line-haul service. *Id.* (533).

SPREAD OF RATES.

Rates on articles in the uniform brick list from Perth Amboy district and Winslow Junction, N. J., to Portland, Me., and from Waterloo, Va., to Boston, Mass., and Albany, N. Y., which will not increase the spreads existing prior to *Increased Rates, 1920*, 58 I. C. C., 220, between Clearfield, Pa., group, on the one hand, and Perth Amboy, Winslow Junction, and Waterloo on the other, prescribed. *National Paving Brick Mfrs. Assn. v. A. & V. Ry. Co.*, 213 (248-249).

Spread between the rates on blackstrap molasses moving to Nashville, Tenn., and Birmingham, Ala., can not be fixed by the relationship of class and commodity rates which are on a more normal basis, but they afford no justification for the destruction of the relationship which had been maintained between the rates to Nashville and Birmingham from the time that specific rates were first published to these points. Such destruction found to result in undue prejudice to Birmingham and should be restored. *Western Grain Co. v. Director General, as Agent*, 335 (339).

SPUR TRACK. *See PRIVATE TRACK.*

STABILITY OF RATES.

Rate stability is one of the important needs of commerce. It is a fundamental law of business that the anticipation of a falling market tends to restrict purchases. *Reduced Rates, 1922*, 676 (706, 733).

The needs of commerce can not be met if rates are to fluctuate with market prices of commodities. In bringing down a rate level to meet lowered expenses reductions should be made generally upon all commodities in substantially equal ratio. *Id.* (734).

STATE AND INTERSTATE.

In original report, 60 I. C. C., 421, it was found that the failure of carriers to increase their rates for intrastate traffic within Texas to correspond to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220, resulted in undue preference of persons and localities in intrastate commerce, in undue prejudice to persons and localities in interstate commerce, and in unjust discrimination against interstate commerce. Upon further hearing, order modified so as to exclude from its provisions the rates on refined sugar from Sugarland, Tex., to Texas common points. *Intrastate Rates within the State of Texas*, 25.

STATE AND INTERSTATE—Continued.

Intrastate rates on articles in the uniform brick list from Danville, Ill., to Chicago, Ill., to extent that they are lower than the interstate rates contemporaneously maintained from Danville, Ill., and Attica, Ind., to Chicago, found unduly prejudicial to Attica and shippers in interstate commerce from Danville and Attica, unduly preferential of intrastate shippers from Danville, and unjustly discriminatory against interstate commerce. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (241).

Cooperation of State authorities, with a view to harmonizing intrastate rates generally within Illinois and Indiana with the interstate rates prescribed herein for the removal of undue prejudice, suggested. *Id.* (241).

STATE COMMISSIONS.

Cooperation of State authorities, with a view to harmonizing intrastate rates generally within Illinois and Indiana with the interstate rates prescribed herein for the removal of undue prejudice, suggested. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (241).

Proposed reduced rates on coal from mines in Wyoming to points in Utah for the purpose of restoring a previously existing equality in rates from such Wyoming mines and the Castle Gate district of Utah, found not justified. If reductions permitted, the Utah State commission or the carriers might reduce the rates from the Utah mines, practically fixing a differential as warrant for their action, resulting in that destructive competition so out of consonance with the fundamentals of the act and entailing a conflict of authority with the State commission which would have no place in modern rate regulation. *Coal from Wyoming Mines*, 254.

STATE RATES. *See also* STATE AND INTERSTATE.

Rates applicable on excelsior bolts from McDonald, Summit, and Tyner, Tenn., to Chattanooga, Tenn., during Federal control, found unreasonable to extent they exceeded rates on logs. Waiver of undercharges authorized. *Phillips Excelsior Co. v. Director General, as Agent*, 165.

Intrastate distance rates during Federal control on logs from stations on the N., C. & St. L. and Tennessee Central railroads to Nashville, Tenn., found not unreasonable or unduly prejudicial as compared with rates between other points on those lines. *Farris Hardwood Lumber Co. v. Director General, as Agent*, 181.

Contractor's outfit moving during Federal control from Alice, Minn., through Duluth, Minn., to New Duluth, Minn., found to have been mis-routed. Shipment should have moved over an intrastate route through Cloquet, Minn., at lower combination rate than charged. Reparation awarded. *Jacobson Bros. v. N. P. Ry. Co.*, 201.

Following *Buick Motor Co.*, 60 I. C. C., 669, fourth-class rate applicable on hardware, n. o. s., and assessed on automobile-tire carriers moving from Detroit to Flint, Mich., during Federal control, found not unreasonable. *Chevrolet Motor Co. of Michigan v. Director General, as Agent*, 281.

Intrastate rates on run-of-mine bituminous coal from certain mines in the Brazil district, in Indiana, to complainant's plant at Brazil, during Federal control, found unreasonable to extent they exceeded rate found reasonable in *Clinton Paving Brick Co.*, 66 I. C. C., 338. Reparation awarded. *Hydraulic Press Brick Co. v. Director General, as Agent*, 295 (297).

STATE RATES—Continued.

Rate on scrap iron from Silvis to Moline, Ill., during Federal control, increased under the minimum-class scale prescribed in General Order No. 28 of the director general, found unreasonable to extent it exceeded lower commodity rate subsequently established, which rate compares favorably with similar and lower rates between other points in the immediate vicinity of Silvis. Reparation awarded. *Standard Rail & Steel Co. v. C., R. I. & P. Ry. Co.*, 317.

Rates applicable on intrastate shipments of bituminous coal, moving during Federal control, from various Indiana mines to Aurora and Frankton, Ind., found unreasonable as compared with rates between other points in the same general territory for similar distances, and to extent they exceeded a rate which would yield a return of approximately 8 mills per ton-mile. Reparation awarded. *Opp Coal Co. v. Director General, as Agent*, 349.

Rates on mine-run bituminous coal from certain mines in the Clifton and Brazil districts in Indiana to certain plants at West Montezuma, Brazil, and near Terre Haute, Ind., during Federal control, found unreasonable to extent they exceeded rates found reasonable in *Clinton Paving Brick Co.*, 66 I. C. C., 338, according to the character and extent of the service. Reparation awarded. *Burns & Hancock Fire Brick & Clay Co. v. Director General, as Agent*, 435.

Rates on bituminous coal from Wheatland to Vincennes, Ind., and from Montgomery and Cannelburg to Loogootee, Ind., during Federal control found unreasonable to extent they exceeded rates prescribed in *Clinton Paving Brick Co.*, 66 I. C. C., 338, for similar distances. Reparation awarded. *Loogootee Fire Clay Products Co. v. Director General, as Agent*, 443.

Rate on broken limestone from Thomasville, Pa., to Tyrone, Pa., during Federal control found unreasonable to extent it exceeded rate on ground limestone, a more valuable and higher grade commodity. Reparation awarded. *West Virginia Pulp & Paper Co. v. Director General, as Agent*, 534.

Minimum charge of \$15 per car established by the director general and assessed on dry phosphate rock moving from Brewster, Fla., to Royster, Fla., during Federal control, found not unreasonable as compared with rates on other low-grade commodities within Florida for similar distances. *Royster Guano Co. v. Director General, as Agent*, 552.

Third-class rating on medicines, n. o. l. b. n., collected on vaseline from Perth Amboy to Jersey City, N. J., during Federal control, found legally applicable and not unreasonable. *Chesebrough Mfg. Co. v. Director General, as Agent*, 555.

The commission is without jurisdiction to prescribe rates for the future or to award reparation on intrastate shipments moving prior to Federal control. *Id.* (555).

Class rate on rock or shale dust from West Frankfort, Ill., to Christopher and Besser, Ill., during Federal control, found unreasonable as compared with lower commodity rates on crushed stone and other low-grade commodities in the same territory. Reparation awarded to basis of commodity rate subsequently established. *Old Ben Coal Corp. v. Director General, as Agent*, 584.

STATE RATES—Continued.

Rates on scrap iron from Bellingham and Sedro Woolley to Seattle, Wash., during Federal control, found not unreasonable or otherwise unlawful. Lower rate from Vancouver, B. C., a farther distant point, was protected by a fourth section order issued by the commission. *Alaska Junk Co. v. Director General, as Agent*, 615.

The fourth section of the interstate commerce act does not apply to intrastate shipments moving during the period of Federal control. *Id.* (616).

STATUTE OF LIMITATIONS. *See* **LIMITATION OF ACTION.**

STORAGE.

Demurrage and storage charges assessed on shipments of wet nitrocellulose and wet picric acid, for export, found to have been illegal. While it may have been the intention of carrier to limit the free time on such export shipments to either 48 or 24 hours and provide for storage thereafter, and to charge demurrage in accordance with its general demurrage tariffs, the tariffs failed to carry that intention into effect. Tariffs must be construed strictly according to their terms, and the intention of the framers is not controlling. Reparation awarded. *Republic of France v. Director General, as Agent*, 419.

STORAGE IN TRANSIT. *See* **TRANSIT ARRANGEMENTS.**

SUBSEQUENTLY ESTABLISHED RATES. *See* **REDUCTION IN RATES (By Carriers).**

SUCCESSOR IN INTEREST.

Where complaint filed by a partnership and since shipments moved such partnership dissolved, one partner acquiring the interest of the other, lawful successor in interest is partly entitled to reparation. *Wagner & Steiner v. Director General, as Agent*, 138 (140).

SUPPLEMENT.

Contention that an increase in an arbitrary, under General Order No. 28 of the director general, was illegal because published in a supplement to a loose-leaf tariff which provided in accordance with Tariff Circular 18-A that no supplement would be issued except to cancel the tariff, not sustained. In connection with increases provided under the general order, the commission temporarily waived the rule requiring all changes in and additions to tariffs issued in loose-leaf form to be made by re-printing both pages of the leaf upon which change is made. *Salem Glass Works v. Director General, as Agent*, 643.

SUPPLEMENTARY REPORT. *See also* **FURTHER HEARING.**

Upon supplemental report, unreasonable freight charges paid on nitrate of soda from Baltimore, Md., to Barksdale, Wis., found not borne by complainant, and reparation denied. Original report, 59 I. C. C., 570, modified. *Du Pont de Nemours & Co. v. Director General, as Agent*, 579.

SWITCH CONNECTION.

There is no duty on the part of common carriers subject to the act to provide tracks off their lands to effect connection with an industry. If an industry desires connection with a trunk line, the duty devolves upon it to make arrangements for the procuring of a spur. *Certain-Teed Products Corp. v. C., R. I. & P. Ry. Co.*, 260 (263).

Paragraph 9 of section 1 of the act makes it the duty of a common carrier under stated circumstances to construct, maintain, and operate, upon reasonable terms, switch connections with private sidetracks which may be constructed to connect with its rails by shippers tendering interstate commerce. But this duty does not arise until the shipper has provided the sidetrack. *Id.* (263).

SWITCHING. *See also* INTERCHANGE SWITCHING; INTERMEDIATE SWITCHING; SPOTTING CARS.

Proposal of the C., M. & St. P. Ry. Co. to eliminate the Green Fruit Auction Co. from list of industries on its rails at Chicago, Ill., and to apply switching charges on fruits destined thereto when the road haul has been performed by other carriers, found justified. Fact that switching charge will in some cases accrue against the traffic does not of itself constitute a ground for condemning the schedule; several routes will be available for delivery at the Chicago rates and the auction house will be substantially as well circumstanced, from the standpoint of free terminal delivery, as are other auction houses. Green Fruit Auction Co.'s Elimination from Industries, 89.

Following *Rutherford-Brede Co.*, 61 I. C. C., 515, failure of the director general to accord switching service on intrastate shipments of ore at Clarkdale, Ariz., during Federal control, or to reimburse complainant for furnishing said service as the agent of the director general, found not in violation of the interstate commerce act or the Federal control act. Any redress to which complainant may be entitled found to rest with the courts. *United Verde Extension Mining Co. v. Director General, as Agent*, 271.

Contention that the Illinois Central's pier track No. 1 in Chicago, Ill., should be listed in Lowrey's tariff as an industry track, under which tariff line-haul carriers would then absorb the switching charge of the Illinois Central, *Held*: Point of delivery is an l. c. l. freight station which was opened to complainant's shipments as affording the only practicable point of delivery. Record affords no basis for listing this pier track as an industry track and switching charge thereto found not unreasonable. *Great Lakes Dredge & Dock Co. v. Director General, as Agent*, 274 (276).

In the absence of unjust discrimination or undue prejudice a carrier can not be compelled to absorb the switching charges of a connecting line. *Hunt, Helm, Ferris & Co. v. C. & N. W. Ry. Co.*, 283 (284).

Switching charges collected on interstate traffic at Albany, Ga., found to have been illegally assessed. Tariffs did not authorize the imposition of a charge for the services performed which were merely the receipt and delivery of cars at a point on complainant's siding just far enough off carrier's main-line track not to interfere with traffic moving over that track. Refund directed. *Hardaway Contracting Co. v. G. S. W. & G. R. R. Co.*, 331.

No legal obligation rests upon carriers to perform switching and spotting services solely at a shipper's convenience, and a shipper is not entitled to an allowance for these services if the carrier is ready and willing to perform them but is not permitted to do so by the shipper. Shipper's refusal to permit carriers to perform such service would absolve them from the obligation to do so. *Stewart Furnace Co. v. P. R. R. Co.*, 528 (530).

Increased charges for switching at Kansas City, Mo.-Kans., proposed by the St. Louis-San Francisco Ry., Missouri Pacific R. R., and Kansas City Southern Ry., found not justified. Cost studies submitted by carriers were based upon a formula agreed upon after conference, but the volume of business during the test period was subnormal and a considerable portion of the costs included in the studies is more or less constant and varies but little with the volume of business. Furthermore, operating costs should be coming down, and certain road-haul rates have been reduced. *Reciprocal Switching at Kansas City*, 591.

SWITCHING—Continued.

The work of making and breaking up trains and the arrangement of cars in a train in station order are road and not switching services. *Id.* (600).

SWITCH TRACK. See **SIDETRACK.**

SYSTEM.

No bills of lading were issued and shipments moved on mine manifests.

Routing "Erie" requested by shipper found not to amount to an instruction to move the shipment via the Erie and Chicago & Erie because both are part of the same system. The Chicago & Erie is a separate corporate entity filing its own reports and tariffs with the commission, and lower rate applied via the Erie and Pennsylvania.

Shipment found misrouted. *Carney v. Director General, as Agent*, 199.

Contention that as carriers were under Federal control and operated as a unified system, and as routing specified by shippers was disregarded when speed and efficiency of service were thereby promoted, that shipments should have been forwarded via a lower rated route under General Order No. 1 of the director general, *Held*: That order provided that under certain circumstances the routing of shippers was to be disregarded, but also provided that rates applicable over routes designated should be observed. *National Supply Co. v. C., B. & Q. R. R. Co.*, 285 (286).

For rate-making purposes the Chicago, Memphis & Gulf R. R. Co. should be considered as a branch line of the Illinois Central. It does not follow that rates on such branch line should be the same as upon the main lines. *Smith v. I. C. R. R. Co.*, 427 (433).

Tariff rule provided that, in order to obtain the benefit of the through rate from point of original shipment to final destination, shipments be forwarded outbound from transit point over the rails of carrier having the inbound haul. Contention that during Federal control the line of the Yazoo & Mississippi Valley was the same as the line of the Missouri Pacific for the purpose of the application of the above rule not sustained, as the lines were still distinguished by their corporate names. *Lee Pendergrass Cotton Co. v. Director General, as Agent*, 637 (641).

TAP LINES.

Complaint of the Prescott & N. W. R. R. Co., seeking release from the application of the commission's orders in *The Tap Line case*, 31 I. C. C., 490, not sustained. The commission has consistently refused to release any tap line from the application of such orders in the absence of complete separation from the control of any lumber company in active operation and served by it. There still exists a substantial community of interest between complainant and the Ozan-Graysonia Lumber Co. and complete control of the former by the majority stockholders of the latter. *Prescott & Northwestern R. R. Co. v. M. P. R. R. Co.*, 487.

TARIFF CIRCULAR 18-A.

Rule 5 (b) of Tariff Circular 18-A, cited. *Roxana Petroleum Co. v. Director General, as Agent*, 77 (79).

In publishing tariffs carrier failed to show as clearly as it should have done that a switching rate superseded a group rate formerly in effect. Contention that switching charge was not legally established because item in which that charge was published did not specifically refer to and cancel the line-haul rate, and the tariff naming that rate was not at the same time correspondingly amended in accordance with the provisions of rule 8 (a) of Tariff Circular 18-A, and that shipments were undercharged, not sustained. *Louis Werner Stave Co. v. Director General, as Agent*, 395 (396-398).

TARIFF CIRCULAR 18-A—Continued.

Class rates on petroleum lubricating oil and grease from Newark, N. J., to Charlotte, N. C., and Atlanta, Ga., found unreasonable and unduly prejudicial to extent they exceeded lower commodity rates applicable from Jersey City, N. J., and other New York rate points. Lower rate, published subject to rule 77 of Tariff Circular 18-A, was subsequently established from Newark, a point directly intermediate between Jersey City and points of destination. Reparation awarded. *New York & New Jersey Lubricant Co. v. Director General, as Agent*, 477.

Except under unusual conditions, the commission has uniformly awarded reparation on shipments moving from intermediate points under rates that were higher than from a more distant point, where the rate from the latter point was established subject to rule 77 of Tariff Circular 18-A. *Id.* (478).

Combination rate assessed on cement from Cape Girardeau, Mo., to Fisher, Ark., reconsigned to Little Rock, Ark., found unreasonable, due to the factor from Fisher to Little Rock. Tariff naming lower joint rate from Cape Girardeau to Fisher and Little Rock provided, in accordance with rule 77 of Tariff Circular 18-A, that rates would be established from intermediate points not exceeding those from more distant points. Reparation awarded. *Cape Girardeau Portland Cement Co. v. Director General, as Agent*, 635.

Contention that an increase in an arbitrary, under General Order No. 28 of the director general, was illegal because published in a supplement to a loose-leaf tariff which provided, in accordance with Tariff Circular 18-A, that no supplement would be issued except to cancel the tariff, not sustained. In connection with increases provided under the general order the commission temporarily waived the rule requiring all changes in and additions to tariffs issued in loose-leaf form to be made by reprinting both pages of the leaf upon which change is made. *Salem Glass Works v. Director General, as Agent*, 643.

Combination rates charged on k. d. poultry crates from Dyer, Tenn., to Cincinnati, Ohio. Lower combination applicable under authority of rule 5-b of Tariff Circular 18-A. Refund of overcharges directed. *Day & Co. v. Director General, as Agent*, 656.

TARIFF INTERPRETATION.

The meaning of a tariff is limited to the plain import of the language employed therein. *El Paso Chamber of Commerce v. Director General, as Agent*, 135 (136).

Intention of tariff framers can not be considered, and if there is ambiguity in tariffs, they should be construed against the framer. *Northwest Steel Co. v. Director General, as Agent*, 195 (196).

Tariffs are to be construed according to their language, and the intention of the framers is not controlling. *Carney v. Director General, as Agent*, 309 (310).

Combination rate to and from Birmingham, Ala., assessed on shipments of pig iron moving as routed via the Birmingham Southern from North Birmingham, Ala., to New Orleans, La., found illegal. Tariff prohibited participation of that carrier as an intermediate carrier in a movement from specified stations to specified stations but did not prohibit it from participating in a movement from one of those points through another of those points to a destination not named therein. Birmingham group rate found legally applicable and reparation awarded. *Tutwiler & Brooks v. S. Ry. Co.*, 311.

TARIFF INTERPRETATION—Continued.

Demurrage and storage charges assessed on shipments of wet nitrocellulose and wet picric acid, for export, found to have been illegal. While it may have been the intention of carrier to limit the free time on such export shipments to either 48 or 24 hours, and provide for storage thereafter, and to charge demurrage in accordance with its general demurrage tariffs, the tariffs failed to carry that intention into effect. Tariffs must be construed strictly according to their terms, and the intention of the framers is not controlling. Reparation awarded. *Republic of France v. Director General, as Agent*, 419.

Rate on wheat from Sikeston and Benton, Mo., to Atlanta, Ga., constructed by addition of certain differentials to the rates from Cairo, Ill. Carriers under General Order No. 28 of the director general increased both the rates from Cairo to Atlanta, and the "bases for rates * * * to be used in arriving at rates" from and to points under consideration. *Held*: Tariff plainly increased rates from Cairo to Atlanta, but since it did not operate to increase the "bases" for constructing rates from Sikeston and Benton, shipments found overcharged and reparation awarded. *Charleston Milling Co. v. Director General, as Agent*, 525.

Missouri Pacific tariff concurred in by Missouri & North Arkansas R. R., provided for the application from transit point of the balance of the joint through rate from original point of shipment to final destination when shipments move outbound from transit point *over this line*. *Held*: Phrase "over this line" has reference to rails of Missouri Pacific and on shipments which moved into transit point via the Missouri & North Arkansas and outbound over the Missouri Pacific the transit rates were applicable. Shipments found overcharged and reparation awarded. *Lee Pendergrass Cotton Co. v. Director General, as Agent*, 637 (641).

Shipments of tops, bottoms, and sides, which had been nailed, cleated, or wired into shapes making it necessary only to twist together four wires and add a few nails to produce a complete set-up crate, found not to be crate material as described in the tariff, but knocked-down poultry crates or coops. *Day & Co. v. Director General, as Agent*, 656.

TARIFF SUPPLEMENT. See SUPPLEMENT.

TAXES.

Railway corporations should, like other corporations, pay their Federal income taxes out of income rather than collect it, in effect, from the public in the form of transportation charges adjusted to enable them to retain the designated fair return over and above the tax. *Reduced Rates, 1922*, 676 (683).

TERMINAL COSTS.

In order to show the terminal cost of handling brick traffic in central territory, carriers introduced cost studies based on the so-called Coverston-Saur formula, 1920. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (231).

Terminal cost of handling bituminous coal, computed on basis of the so-called Saur-Coverston formula, 1920. *Hydraulic Press Brick Co. v. Director General, as Agent*, 295 (297).

TERMINAL DELIVERY. See DELIVERY.

TERMINAL EXPENSES.

In a proceeding dealing with a whole rate structure, too much weight should not be given to terminal costs based on tests at comparatively few points and for short periods. *National Paving Brick Mfrs. Asso. v. A. & V. Ry. Co.*, 213 (232).

THROUGH AND LOCAL.

Rate on old rails from La Fayette, Ind., to Mobile, Ala., exceeded the aggregate of intermediate rates to and from Roachdale, Ind. Reparation awarded. *Standard Rail & Steel Co. v. L. & N. R. R. Co.*, 9.

Application for authority to charge on old rails from La Fayette, Ind., to Mobile, Ala., through rates which exceed the aggregate of intermediates, denied. *Id.* (10).

Joint rates on beef cattle from Wilson, Okla., to Fort Worth, Tex., exceeded the aggregate of intermediate rates to any from Ardmore, Okla. Reparation awarded. *Davis and Davis v. G., C. & S. F. Ry. Co.*, 303.

A joint rate in excess of the aggregate of intermediate rates subject to the act is prima facie unreasonable. *Id.* (304).

Joint rate on gravel from Hattiesburg, Miss., to Beaumont, Tex., exceeded the aggregate of intermediate rates to and from New Orleans, La. Reparation awarded. *Magnolia Petroleum Co. v. Director General, as Agent*, 321.

Rates on cane syrup, in barrels, from certain points in Florida to Montgomery, Ala., exceeded the aggregate of intermediate rates to and beyond Haylow or Metcalf, Ga. Reasonable maximum rates prescribed and reparation awarded. *Alabama-Georgia Syrup Co. v. Director General, as Agent*, 618.

A through rate which exceeds the aggregate of the intermediates over the route of movement is prima facie unreasonable. *Id.* (621).

Allegation of unreasonableness based solely on the fact that through rate exceeded the sum of separately established rates to and beyond a point not intermediate to any destinations under consideration over any of the routes of movement or by any of the routes designated by the shipper, not sustained. No presumption of unreasonableness attaches to a joint rate applicable over a particular route because the aggregate of intermediate rates over another route would make a lower charge. *Humble Pipe Line Co. v. Director General, as Agent*, 651.

A mere accident of transportation whereby a shipment was carried through destination to the next farther distant point and then hauled back to its destination does not have the effect of making such farther distant point an intermediate point within the meaning of the fourth section of the act. *Id.* (652).

THROUGH ROUTES AND JOINT RATES.

Carriers whose rails do not connect at interchange points may join in the establishment of through routes and joint rates and may employ a switching line to effect transfer of traffic between their rails. The extent to which each shall participate in compensating the switching line under such an arrangement is largely a matter of agreement between the employing carriers. In the absence of agreement to the contrary it would not seem unfair that the expense should be shared equally. *Minneapolis & St. Louis R. R. Co. v. P. & P. U. Ry. Co.*, 412 (417).

TON-MILE REVENUE. See also EARNINGS.

In passing upon the reasonableness of group rates, distances and ton-mile earnings between selected points can not be regarded as controlling. The reasonableness of such rates must be judged by average conditions. *Riverside Coal Co. v. Director General, as Agent*, 205 (209).

TON-MILE REVENUE—Continued.

Rates applicable on intrastate shipments of bituminous coal moving during Federal control from various Indiana mines to Aurora and Frankton, Ind., found unreasonable to extent they exceeded a rate which would yield a return of approximately 8 mills per ton-mile. Reparation awarded. *Opp Coal Co. v. Director General, as Agent*, 849.

TORT.

The charging of an unreasonable rate is a tort, and the parties to such a rate are jointly and severally liable for any resulting damage. *Bloedel-Donovan Lumber Co. v. Director General, as Agent*, 95 (96).

TRACKAGE CHARGE.

Collection of a trackage charge by the Chicago, Ottawa & Peoria Ry. Co. for the use of a portion of its track at Marseilles, Ill., operated as a private switch track, found not unlawful. The amount of consideration paid for the use of this track is a matter of private contract over which the commission has no jurisdiction. *Certain-Teed Products Corp. v. C., R. I. & P. Ry. Co.*, 260.

TRANSCONTINENTAL RATES.

Upon further hearing, former report 56 I. C. C., 318, cubical-capacity carload minima on pine, fir, hemlock, larch, and spruce lumber, and articles taking the same group rates, in closed cars, from North Pacific coast and Inland Empire to eastern destinations, found unreasonable. Reasonable carload minima prescribed. *Lumber Carload Minima*, 98.

Transcontinental class A rate applicable on "Machinery and machines—Engines, steam or internal combustion, n. o. l. b. n.," and assessed on steam turbines moving from Schenectady, N. Y., and Trenton, N. J., to Portland, Oreg., and Seattle, Wash., found to have been illegal. Shipments found entitled to lower combination commodity rate applicable under tariff description of "Machinery and machines, * * * Turbines and parts thereof," which item was not limited to exclude steam turbines. *Northwest Steel Co. v. Director General, as Agent*, 195.

Rate on "furnaces, air or steam" assessed on shipments of cast-iron furnaces with sheet-metal casings and caps, k. d. and crated, moving from Cincinnati, Ohio, to Pacific coast points, found legally applicable and not unreasonable or discriminatory. Tariff provided a lower rate on "cast-iron furnaces, k. d.," but in view of the fact that complainant's furnaces comprised as an integral and necessary part sheet-iron casings, contention that such lower rate was applicable not sustained. *Monitor Stove Co. v. Director General, as Agent*, 305.

Rates on table and shelf oilcloth from Peekskill, N. Y., to Portland, Oreg., found unreasonable to extent it exceeded lower rate contemporaneously in effect to San Francisco, Calif., which lower rate was subsequently made applicable to Portland. Reparation awarded. *Portland Traffic & Transportation Assn. v. S., P. & S. Ry. Co.*, 589.

Applicable class A rates on pulp and paper-making machinery from defined territory east of the Missouri River to Camas, Wash., and West Linn, Oreg., found not unlawful because in excess of commodity rates on electrical, ironworking (power), mining, smelting, and sugar-making machinery, contemporaneously applicable from the same originating territory to western destinations. *Crown Willamette Paper Co. v. Director General, as Agent*, 631.

TRANSIT ARRANGEMENTS.**In General :**

Carriers' rights and responsibilities in connection with transit arrangements are joint, and all parties to joint-through rates are entitled to a voice when questions arise as to whether there shall be a transit arrangement, a charge therefor, or its amount. No action should be taken that would put a burden on shippers pending settlement. Charge should be published as a joint charge and should be collected by the carrier that can do so with the greater efficiency and convenience, and divided in proportion to the expenses incurred by each line. *Illinois Central R. R. Co. v. N. O. G. N. R. R. Co.*, 505.

The commission does not ordinarily give retroactive effect to a transit service in the absence of unjust discrimination or undue prejudice and damage thereunder. *De Jean v. Director General, as Agent*, 611 (614).

Tariff rule provided that in order to obtain the benefit of the through rate from point of original shipment to final destination, shipments be forwarded outbound from transit point over the rails of carrier having the inbound haul. Contention that during Federal control the line of the Yazoo & Mississippi Valley was the same as the line of the Missouri Pacific for the purpose of the application of the above rule, not sustained, as the lines were still distinguished by their separate corporate names. *Lee Pendergrass Cotton Co. v. Director General, as Agent*, 637 (641).

Contention that if carriers were permitted to disregard existing rate schedules under General Order No. 1 of the director general and establish through routes to promote speed and efficiency of transportation, it would have been just and reasonable to allow shippers, when a route over which a transit arrangement applied was embargoed, to forward shipments via another route not embargoed, and to allow the adjustment of charges on the basis of the transit rate, *Held*: Carriers' agents were not authorized to divert shipments over routes not provided for in tariffs, when the route ordinarily used was embargoed. *Id.* (642).

If carriers propose rate reductions which they justify in part upon the ground that they are restricted to certain originating territory, and upon the ground that they are subject to transit privileges at intermediate markets, they should be able to show that the rates will in fact be so restricted, and that they will in fact be subject to such transit provision. *Grain Rates from Minnesota and Wisconsin*, 665 (675).

Compression: Failure of defendants to absorb the entire compress charge on shipments of cotton compressed at Weleetka, Okla., and reshipped to interstate destinations, thereby compelling complainants to make payments to compress companies in addition to transportation charges, found unreasonable. Tariffs of carriers were subsequently amended to provide for the absorption of the entire charge, and rates have generally included the entire compress charge and are in reality based on the inclusion of a reasonable charge for that service. Reparation awarded. *Anderson, Clayton & Co. v. F. S. & W. R. R. Co.*, 299.

TRANSIT ARRANGEMENTS—Continued.**Concentration and Compression:**

Inbound and outbound rates, both factors of which were increased under General Order No. 28 of the director general and assessed on cotton shipped from Louisiana points to Opelousas, La., for concentration and compression, thence reshipped to Pacific and Gulf coast points, found not unreasonable. Rule for eliminating the double increase was not applied for reason that carrier properly considered the shipments inbound and outbound as separate and distinct, due to shipper's failure to comply with transit rules. *De Jean v. Director General, as Agent*, 611.

Inbound and outbound rates on cotton from points in Arkansas to eastern mill points and the Gulf ports, concentrated and compressed at, and reshipped from Helena, Ark., found not unreasonable via routes of movement. Contrary to tariff rule, but due to embargoes, car shortages, and other reasons, shipments were forwarded outbound from transit point over the rails of carriers which were different from those which performed the inbound movement. *Lee Pendergrass Cotton Co. v. Director General, as Agent*. 637.

Heater Service: Heater transit charges on potatoes shipped in Eastman cars from Aroostook County, Me., to Boston, Mass., New York, N. Y., Philadelphia, Pa., and certain group destinations, found not unreasonable. There is a substantial disparity between the heater transit rates and service here assailed and those maintained in western trunk-line and northwestern territories. Since 1917 Eastman cars have been operated at a loss, and during 1920-21, when rates here assailed were exacted, such cars did not earn a sufficient amount to allow for interest upon investment. *American Fruit & Vegetable Asso. v. B. & A. R. R. Co.*, 446.

Inspection: Combination rates and charges on wheat from Lucas, Kans., inspected at Salina, Kans., and diverted to points in California, found illegal. There was nothing in a tariff naming lower joint rates which would have precluded shipper from routing through Salina had shipments been billed direct from Lucas to the California points; such lower joint rate was not restricted to apply via any particular route or the reconsigning privileges in connection therewith to any particular point; and, Salina being directly intermediate between points of origin and destination via route of movement, shipments were entitled to the inspection privilege at that point without additional charge. Reparation awarded. *Freeman Grain Co. v. Director General, as Agent*, 559.

Milling: Proposed cancellation of transit arrangement at Schuyler, Nebr., on grain and seeds originating on the C., B. & Q. R. R., which would result in the application of combination rates higher than those now applicable, found justified on shipments moving via Columbus, Nebr., but not as to shipments moving via Fremont, Nebr. *Transit Privileges on Grain at Schuyler, Nebr.*, 550.

Storage:

Combination rate on apples from Chelan, Wash., to Dallas, Tex., there stored in transit, and forwarded to El Paso, Tex., found not unreasonable or unduly prejudicial. Lower group rate contemporaneously in effect, but such lower rate was restricted to delivery via certain lines over which shipments did not move. *El Paso Chamber of Commerce v. Director General, as Agent*, 135.

